

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

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IN RE PHARMACEUTICAL INDUSTRY)	MDL No. 1456
AVERAGE WHOLESALE PRICE LITIGATION)	Master File No. 01-12257-PBS
<hr/>)	Subcategory Case No. 06-11337
)	
THIS DOCUMENT RELATES TO:)	Judge Patti B. Saris
<i>State of California, ex rel. Ven-A-Care v.</i>)	
<i>Abbott Laboratories, Inc., et al.</i>)	Magistrate Judge
Case No: 1:03-cv-11226-PBS)	Marianne B. Bowler
<hr/>)	

**STATE OF CALIFORNIA’S SUR-REPLY BRIEF IN FURTHER OPPOSITION TO
DEFENDANTS’ MOTION FOR AN ORDER GRANTING LEAVE TO TAKE
DEPOSITION OUT OF TIME**

Defendants’ Reply (Def. Rep., Dkt 6582, 489) to California’s Opposition (CA Opp., Dkt 6482, 437) includes several arguments urging the Court to grant their motion to depose Thomas Ahrens, including, for the first time, the argument that California engaged in spoliation. California responds as follows:

- 1) Defendants provide no basis to support their spoliation claim; and
- 2) Defendants’ remaining arguments also have no merit.

1. Defendants provide no basis to support their spoliation claim.

Defendants claim that California’s failure “to produce any documents pertaining to [Ahrens] indicates that his electronic documents were destroyed when he left DHS. Thus, the only way Defendants can learn of the relevant information he may possess is through his deposition.” Def. Rep. at 5. Defendants are wrong in several respects.

First, if the basis on which Defendants argue in the preceding quoted assertion were itself sufficient reason to grant a deposition out of time, i.e. that the absence of discovery documents pertaining to a person with allegedly relevant knowledge in turn justifies an out of time deposition of that person, California would be moving for leave to take out of time depositions of

numerous employees of the defendant pharmaceutical manufacturers. Even if the late-breaking spoliation allegation were true, and it is not, the absence of document discovery pertaining to an individual does not constitute a valid basis on which to allege spoliation and is not, without more, a reason to justify ordering a deposition after discovery has closed.

Second, the quoted assertion is factually wrong. Between August 1, 2007 and February 13, 2009, California produced more than 80 paper documents containing references pertaining to Mr. Ahrens. In addition, again contrary to Defendants' assertions, California produced a number of electronic materials referencing Mr. Ahrens, including: (a) 46 documents, on October 24, 2008; 42 documents, on November 14, 2008; 2 documents, on November 25, 2008; 142 documents, on February 27, 2009; and 4 documents, on March 16, 2009.

Third, Defendants offer no proof of spoliation, and overlook the fact that California has produced thousands of documents concerning Medi-Cal's operations predating 1994 (the earliest actionable period alleged in California's complaint), with some documents going as far back as 1982 – fully *16 years* before Ven-A-Care filed its original complaint. For instance, California has produced, (a) materials relating to its State Plan Amendments dating back to 1982; (b) responsive DHCS document retention schedules dating back to 1983; (c) responsive Legislative Materials, Legislative Bill Analyses and Enrolled Bill Reports dating back to 1985; (d) responsive DHCS Organizational Charts dating back to 1985; (e) Provider Manual updates, and the Provider Manual, dating back to 1991; and (f) responsive DHCS/Medi-Cal Fiscal Intermediary Operational Instruction Letters dating back to 1994.

2. Defendants' remaining arguments have no merit.

Defendants argue their delay in seeking Mr. Ahrens' deposition was the result of "careful deliberation" required by California's allegedly late document productions. Def. Rep. at 2-4.

This argument is substantively deficient for a number of reasons.

First, Defendants maintain California's completion of electronic discovery by March 16 was "tardy" and apparently constituted some sort of bad faith, forcing Defendants to have make "educated guesses" about who to depose. Def. Rep. at 2. This assertion is difficult to comprehend when Defendants themselves knew at least by January 2009 that Mr. Ahrens had participated in the 2000 Drug Task Force, which constituted a specifically described basis on which to list him as a possible deponent. *See* CA Opp., Ex. 7, second entry.

Second, Defendants claim that until they deposed Vic Walker and Katherine Ahrens in May 2009, "both of whom were particularly knowledgeable," they did not understand that they had to put Tom Ahrens on their "short list" in preparation for additional "careful deliberation." Def. Opp. at 2-3. Defendants never raised this argument in any substantive manner in their Motion, and in particular never mentioned either deposition as a basis on which to justify the relief they seek. One explanation for this omission in their moving argument could be the fact that Vic Walker's deposition contains no mention, anywhere, of Thomas Ahrens. *See* Ex. 1, Deposition of Vic Walker dated May 21, 2009. Katherine Ahrens' deposition contains precisely one instance of the name "Tom Ahrens," as follows: "Q. Okay. Did you marry Tom Ahrens? A. Yes." Ex. 2, Deposition of Katherine Ahrens dated May 20, 2009 at 11:9-10.

Finally, Defendants' Opposition manifests a certain confusion which undercuts their argument. Defendants appear concerned, simultaneously, that Ahrens should be produced for a late deposition both because California produced too little information (i.e., their spoliation assertion) and too much information (i.e., the assertion that California "buried" his name in its initial disclosures served in August 2007, and again in written interrogatory responses served in

December 2007, because that made their task of identifying his purported salience as a witness more difficult. Def. Opp. at 3-4.). Defendants also appear uncertain of the gravamen of the sin they impute to California regarding its allegedly “late” March 16 production. At one point they claim that “Defendants’ delay in seeking Mr. Ahrens’ deposition was the result of careful deliberation by Defendants that was required by California’s tardy production of its electronic production.” Def. Opp. at 1-2. Elsewhere, they protest that “Defendants never contended that they needed Mr. Ahrens’ deposition because of some late-produced piece of discovery or new development.” Def. Opp. at 5. Neither assertion explains why Mr. Ahrens’ deposition is so critical to Defendants’ defense, or why Defendants waited so long to seek Mr. Ahrens’ deposition (i.e., until June 9, 2009, leaving three weekdays before discovery cut-off) that compliance with this Court’s discovery deadline was not feasible.

CONCLUSION

For the reasons set forth above, Plaintiff the State of California respectfully requests this Court to (a) order the instant Sur-Reply be filed, or in the alternative that Defendants’ spoliation arguments be deemed ignored, and (b) enter an order denying Defendants’ Motion for an Order Granting Leave to Take Deposition Out of Time.

Dated: October 16, 2009

Respectfully submitted,

EDMUND G. BROWN JR.

Attorney General for the State of California

By: /s/ Nicholas N. Paul

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**Attorneys for Plaintiff,
STATE OF CALIFORNIA**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on October 16, 2009, a copy to Lexis-Nexis for posting and notification to all parties.

/s/ Nicholas N. Paul
NICHOLAS N. PAUL

EXHIBIT 1

Walker, Vic

May 21, 2009

Sacramento, CA

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

-----X

IN RE PHARMACEUTICAL INDUSTRY)

AVERAGE WHOLESALE PRICE)

LITIGATION)

-----X MDL No. 1456

THIS DOCUMENT RELATES TO:) Civil Action:

State of California, ex rel.) 01-12257-PBS

Ven-A-Care v. Abbott)

Laboratories, Inc., et al.,)

-----X

THURSDAY, MAY 21, 2009

VIDEOTAPED DEPOSITION OF

VIC WALKER

SACRAMENTO, CALIFORNIA

Reported By: CAROL NYGARD DROBNY, CSR No. 4018

Registered Merit Reporter

Henderson Legal Services, Inc.

202-220-4158

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Walker, Vic

May 21, 2009

Sacramento, CA

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<p>1 APPEARANCES:</p> <p>2</p> <p>3 For the STATE OF CALIFORNIA:</p> <p>4</p> <p>5 BUREAU OF MEDI-CAL FRAUD & ELDER ABUSE</p> <p>6 BY: JOHN FISHER</p> <p>7 Attorney General</p> <p>8 Civil Prosecutions Unit</p> <p>9 110 West A Street, #1100</p> <p>10 San Diego, California 92186</p> <p>11 john.fisher@doj.ca.gov</p> <p>12</p> <p>13 -AND-</p> <p>14</p> <p>15 BUREAU OF MEDI-CAL FRAUD & ELDER ABUSE</p> <p>16 BY: SUZANNE GRAYDON</p> <p>17 Investigative Auditor II</p> <p>18 110 West A Street #100</p> <p>19 San Diego, California 92186</p> <p>20 suzanne.graydon@doj.ca.gov</p> <p>21</p> <p>22</p>	<p>1 APPEARANCES: (CONTINUED)</p> <p>2</p> <p>3 For the Defendant SANDOZ, INC.:</p> <p>4</p> <p>5 WHITE & CASE</p> <p>6 BY: LARA A. BERWANGER, ESQ.</p> <p>7 1155 Avenue of the Americas</p> <p>8 New York, New York 10036</p> <p>9 lberwanger@whitecase.com</p> <p>10</p> <p>11 For DEY & MYLAN:</p> <p>12</p> <p>13 KELLEY DRYE & WARREN, LLP</p> <p>14 BY: MICHAEL MALONEY, ESQ.</p> <p>15 BRENDAN CYR, ESQ.</p> <p>16 101 Park Avenue</p> <p>17 New York, New York 10178</p> <p>18 mmaloney@kelleydrye.com</p> <p>19 bcyr@kelleydrye.com</p> <p>20</p> <p>21</p> <p>22 (CONTINUED)</p>
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<p>1 APPEARANCES: (CONTINUED)</p> <p>2</p> <p>3 For the STATE OF CALIFORNIA:</p> <p>4</p> <p>5 STATE OF CALIFORNIA</p> <p>6 OFFICE OF THE ATTORNEY GENERAL</p> <p>7 CALIFORNIA DEPARTMENT OF JUSTICE</p> <p>8 BY: RAYMOND J. LIDDY</p> <p>9 Deputy Attorney General</p> <p>10 1455 Frazee Road, Suite 315</p> <p>11 San Diego, California 92108</p> <p>12 raymond.liddy@doj.ca.gov</p> <p>13</p> <p>14 and</p> <p>15</p> <p>16 DEPARTMENT OF HEALTH SERVICES</p> <p>17 BY: JANET M. ALEXANDER</p> <p>18 Staff Counsel</p> <p>19 Office of Legal Services MS0010</p> <p>20 1501 Capitol Avenue, Suite 71.5001</p> <p>21 Sacramento, California 95899</p> <p>22 jalexander@dhs.ca.gov</p>	<p>1 APPEARANCES: (CONTINUED)</p> <p>2</p> <p>3 For VENACARE FLORIDA KEYS: (Afternoon Session Only)</p> <p>4</p> <p>5 KRAUSE, KALFAYAN, BENINK & SLAVENS</p> <p>6 BY: DAVID B. ZLOTNICK, ESQ.</p> <p>7 625 Broadway, Suite 635</p> <p>8 San Diego, CA 92101</p> <p>9 dzlotnick@kkbs-law.com</p> <p>10</p> <p>11</p> <p>12 Videographer: BENJAMIN LEWIS</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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<p>1 EXHIBITS (CONTINUED)</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3 Exhibit Walker 015 - CAAG/DHS0086481 - 6491.... 156</p> <p>4 Exhibit Walker 016 - CAAG/DHS-E0044649 - 4651.. 162</p> <p>5 Exhibit Walker 017 - CAAG/DHS-E0018998..... 183</p> <p>6 Exhibit Walker 018 - CAAG/DHS-E0041068 - 1094.. 187</p> <p>7 Exhibit Walker 019 - SANDOZ CALI3000314 - 0368. 216</p> <p>8 Exhibit Walker 020 - CAAG/DHS-SAN000063 - 0078. 219</p> <p>9 Exhibit Walker 021 - CAAG/DHS-SAN000296 - 0329. 222</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 District Court, District of Massachusetts, in the</p> <p>2 case captioned, Pharmaceutical Industry Average</p> <p>3 Wholesale Price Litigation, Case Number 01-122 57</p> <p>4 PBS.</p> <p>5 This is the beginning of tape one of the</p> <p>6 video deposition of Vic Walker on May 21st, 2009.</p> <p>7 We are located at 1300 I Street,</p> <p>8 Sacramento, California 94244.</p> <p>9 Counsel, would you please identify</p> <p>10 yourselves beginning with the questioning</p> <p>11 attorney.</p> <p>12 MR. MALONEY: Michael Maloney with Kelly</p> <p>13 Drye & Warren on behalf of Dey, Inc., Dey, L.P.,</p> <p>14 Mylan, Inc., and Mylan Pharmaceuticals.</p> <p>15 MR. CYR: Brendan Cyr from Kelly Drye &</p> <p>16 Warren on behalf of Dey, Inc., Dey, L.P., Mylan,</p> <p>17 Inc., and Mylan Pharmaceuticals.</p> <p>18 MS. BERWANGER: Lara Berwanger from</p> <p>19 White & Case on behalf of Sandoz, Inc.</p> <p>20 MR. FISHER: John Fisher for the State</p> <p>21 of California.</p> <p>22 THE WITNESS: Vic Walker for California</p>

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<p style="text-align: right;">Page 10</p> <p>1 Department of Health Care Services. 2 MR. LIDDY: Raymond Liddy with the 3 Department of Justice, State of California. 4 MS. ALEXANDER: Janet Alexander, the 5 Department of Health Care Services. 6 Suzanne Graydon, California DOJ. 7 VIDEOGRAPHER: Thank you. 8 Will the Reporter please swear in the 9 witness. 10 (Thereupon the oath was 11 administered to the witness by the Court 12 Reporter.) 13 14 EXAMINATION 15 BY MR. MALONEY: 16 Q. Good morning, Mr. Walker. 17 Can you please state and spell your name 18 for the record. 19 A. I typically go by Vic, V-i-c, Walker, W- 20 a-l-k-e-r. 21 My full name is Victor McCoy Walker, Jr. 22 Q. Thank you.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Did that matter have anything to do with 2 prescription drug pricing? 3 A. Yes, certainly. 4 Q. And did that relate only to the 5 prescription drug pricing as it relates to Zantac 6 being on the California formulary? 7 A. Primarily. 8 It was -- let's see. 9 How much can I say, given that this was 10 all done as part of a negotiation? 11 MR. FISHER: Well, it's probably -- 12 speak in generalities if it's confidential, if 13 it's protected under some sort of settlement 14 agreement. But you can answer the question in 15 that light. 16 BY MR. MALONEY: 17 Q. Well, just one more question on that 18 matter. 19 Do you know the result of that case? 20 A. We won. Zantac did not go back on the 21 formulary. 22 Q. Okay.</p>
<p style="text-align: right;">Page 11</p> <p>1 What is your current home address? 2 A. 811 Shasta Circle, El Dorado Hills, 3 California 95762. 4 Q. And your current business address? 5 A. 1501 Capitol Avenue, Sacramento, 6 California 95814. 7 Q. Thank you. 8 Mr. Walker, have you ever been deposed 9 before? 10 A. Not on a face-to-face like this. 11 In the past I have done a written 12 deposition once. 13 Q. Do you know if that was the only 14 occasion that you did a written deposition? 15 A. You know, there may have been a second 16 one, but I -- I clearly remember one -- more 17 clearly. 18 Q. Do you remember generally what that 19 deposition was about? 20 A. The makers of Zantac were suing us over 21 having taken them off the Medi-Cal formulary. 22 They didn't like that.</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Actually, the list of contract drugs at 2 that point. 3 Q. Okay. Have you ever given other sworn 4 testimony before a Court or a Legislature? 5 A. Not before Legislature. 6 Before a Court I -- I have. I was 7 witness to a traffic accident once. 8 Q. Is that the only occasion you remember 9 giving testimony before a Court? 10 A. Yes. 11 Q. Have you ever prepared testimony for 12 someone else to give before a Court or 13 Legislature? 14 A. I have prepared -- helped prepare 15 documents to be presented to the Legislature. 16 Q. Do you have a general sense on how many 17 occasions you have done something like that? 18 A. One that clearly comes to mind. I'm 19 trying to remember what was it about. 20 It had nothing to do with drug pricing. 21 Q. Okay. Mr. Walker, do you understand 22 that you're under oath in the same manner that --</p>

4 (Pages 10 to 13)

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<p style="text-align: right;">Page 14</p> <p>1 as if you were a witness at trial?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Okay. Now, before we get started I'm</p> <p>4 going to go over a few basic instructions.</p> <p>5 I'm going to ask you questions. And I</p> <p>6 would ask that you respond verbally rather than a</p> <p>7 nod of the head or anything like that so the Court</p> <p>8 Reporter can record your testimony.</p> <p>9 And I'd also ask that you please wait to</p> <p>10 finish -- for me to ask a question before you</p> <p>11 provide an answer, again, so the Court Reporter</p> <p>12 can record your testimony.</p> <p>13 If I ask a question that you do not</p> <p>14 understand, please feel free to ask me to rephrase</p> <p>15 the question or to ask it again.</p> <p>16 If you need a break at any time, just</p> <p>17 let me know.</p> <p>18 The one thing I would ask is that if we</p> <p>19 -- if you do ask for a break, please answer any</p> <p>20 question pending before we go on a break.</p> <p>21 From time-to-time another attorney may</p> <p>22 object to a question I ask.</p>	<p style="text-align: right;">Page 16</p> <p>1 I have served as a witness a couple of</p> <p>2 other times in some personnel issues back in the</p> <p>3 1980s when I was working for the State Hospital.</p> <p>4 BY MR. MALONEY:</p> <p>5 Q. Is it fair to say that none of those</p> <p>6 matters involved pharmaceutical pricing?</p> <p>7 A. No. It is fair to say that.</p> <p>8 Q. Thanks.</p> <p>9 Mr. Walker, are you currently on any</p> <p>10 medications that would affect your ability to give</p> <p>11 full, accurate and truthful testimony today?</p> <p>12 A. I don't think so.</p> <p>13 Q. Are you on any medications at all?</p> <p>14 A. Yes, I take several.</p> <p>15 Q. If you're comfortable, would you mind</p> <p>16 listing those medications?</p> <p>17 A. I take things for asthma, for sinuses,</p> <p>18 for blood pressure.</p> <p>19 Q. Okay. Do you know of any other reason</p> <p>20 why you might not be able to give full, accurate,</p> <p>21 and truthful testimony today?</p> <p>22 A. No.</p>
<p style="text-align: right;">Page 15</p> <p>1 Unless your attorney instructs you not</p> <p>2 to answer, please answer the question regardless</p> <p>3 of the objection.</p> <p>4 Do you understand these -- these rules?</p> <p>5 A. Yes.</p> <p>6 MR. MALONEY: Thank you.</p> <p>7 Just for the record, I'd like to clear</p> <p>8 up an issue regarding the notice of this</p> <p>9 deposition.</p> <p>10 This deposition was originally noticed</p> <p>11 at a 30(b)(6) deposition, but, in fact, it is a</p> <p>12 30(b)(1) deposition</p> <p>13 THE WITNESS: What does that mean?</p> <p>14 MR. FISHER: That means as we -- you're</p> <p>15 not here as a spokesperson for DHCS on certain</p> <p>16 topics or issues that the Defendants identified.</p> <p>17 You're here as a fact witness as just</p> <p>18 Vic Walker, just what you did, what as you saw,</p> <p>19 just as a fact witness as opposed to as an expert</p> <p>20 witness for DHCS.</p> <p>21 THE WITNESS: Okay. Let me correct</p> <p>22 something that I said earlier.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Mr. Walker, what did you do to prepare</p> <p>2 for this deposition?</p> <p>3 A. Not very much of anything.</p> <p>4 I had a conversation with the -- the</p> <p>5 attorneys yesterday.</p> <p>6 Q. Was that conversation in person or over</p> <p>7 the phone?</p> <p>8 A. In person.</p> <p>9 That is with the State attorneys.</p> <p>10 Q. And do --</p> <p>11 A. Not with your side.</p> <p>12 Q. Okay. Do you recall who was present at</p> <p>13 that meeting?</p> <p>14 A. Janet and John and -- who was the other</p> <p>15 fellow?</p> <p>16 MR. FISHER: For the record, it was</p> <p>17 David Zlotnick, who is the counsel for the</p> <p>18 relators. It's Z-l-o-t-n-i-c-k.</p> <p>19 THE WITNESS: The day before that, I</p> <p>20 think it was, I had a conversation -- actually a</p> <p>21 few days before I had a conversation with Barbara</p> <p>22 Dayvault as well.</p>

5 (Pages 14 to 17)

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Walker, Vic

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<p style="text-align: right;">Page 18</p> <p>1 BY MR. MALONEY:</p> <p>2 Q. Okay. We'll start with the -- the</p> <p>3 conversation with Barbara.</p> <p>4 Was she the only person you had a</p> <p>5 conversation with on that day in preparation for</p> <p>6 the deposition?</p> <p>7 A. Yes.</p> <p>8 Q. Is she an attorney?</p> <p>9 A. I -- that's my understanding, yes.</p> <p>10 Q. And do you know who she represents?</p> <p>11 A. She represents the State. She works</p> <p>12 with Janet.</p> <p>13 Q. Did you review any documents during that</p> <p>14 meeting?</p> <p>15 A. No.</p> <p>16 Q. Do you know -- recall how long that</p> <p>17 meeting lasted?</p> <p>18 A. Oh, it was about 20 minutes. It was a</p> <p>19 hallway meeting really. I just ran in to her, and</p> <p>20 I asked her what to expect.</p> <p>21 Q. So it was an impromptu meeting, it</p> <p>22 wasn't planned?</p>	<p style="text-align: right;">Page 20</p> <p>1 A. I don't think I did, no. I did not.</p> <p>2 Q. And how long did that meeting last?</p> <p>3 A. About an hour.</p> <p>4 Q. Other than lawyers did you speak with</p> <p>5 anyone else about this deposition?</p> <p>6 A. I mentioned to some people that I was</p> <p>7 going to be involved in a deposition.</p> <p>8 Q. Did you discuss the topics of the</p> <p>9 deposition or this lawsuit with anyone?</p> <p>10 A. No.</p> <p>11 Q. Okay. Did you bring any documents with</p> <p>12 you today for the deposition?</p> <p>13 A. Not for the deposition.</p> <p>14 This is just a -- a note of what the</p> <p>15 address is here.</p> <p>16 Q. Okay. Mr. Walker, are you a Registered</p> <p>17 Pharmacist?</p> <p>18 A. Yes.</p> <p>19 Q. When did you first become a Registered</p> <p>20 Pharmacist?</p> <p>21 A. In California -- it was in 1980. I'm</p> <p>22 not sure what the month was.</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Yeah.</p> <p>2 Q. And the meeting yesterday, did you</p> <p>3 review any documents during that meeting?</p> <p>4 A. A document was brought out, but I wasn't</p> <p>5 shown it.</p> <p>6 Q. You saw no part of the document</p> <p>7 whatsoever?</p> <p>8 A. No. It was sitting upside down, so I --</p> <p>9 it was difficult to see.</p> <p>10 Q. Okay. Do you recall who brought that</p> <p>11 document out during the meeting?</p> <p>12 A. I think it was you, John. I think it</p> <p>13 was John.</p> <p>14 MR. FISHER: Unfortunately, I can't</p> <p>15 testify.</p> <p>16 So --</p> <p>17 THE WITNESS: Okay.</p> <p>18 MR. FISHER: It's got to be your --</p> <p>19 THE WITNESS: I think it was John.</p> <p>20 BY MR. MALONEY:</p> <p>21 Q. And during that meeting you saw no other</p> <p>22 documents?</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Are you registered in any other states?</p> <p>2 A. Until recently I was registered in</p> <p>3 Oregon, but I let my license lapse -- or retired</p> <p>4 it, would be more -- a more correct statement.</p> <p>5 Q. Can you briefly describe your education</p> <p>6 beginning with after high school?</p> <p>7 A. I went to Santa Ana College, got an AA</p> <p>8 in prepharmacy, which is -- and then went on to</p> <p>9 Oregon State University in Corvallis, Oregon, and</p> <p>10 got a Bachelor's Degree in pharmacy, BS.</p> <p>11 Q. Did you focus in any particular subject</p> <p>12 during your education?</p> <p>13 A. There was no minor, if you will.</p> <p>14 I was interested in computer</p> <p>15 applications.</p> <p>16 Q. As it relates to pharmacy?</p> <p>17 A. Yes. We were looking at --</p> <p>18 pharmacokinetics kinds of software.</p> <p>19 Q. Since getting your BS from Oregon State</p> <p>20 have you taken any other courses or training</p> <p>21 relating to pharmacy?</p> <p>22 A. I've taken a number of continuing</p>

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<p>1 education courses. I have not pursued a -- a</p> <p>2 further degree in pharmacy though.</p> <p>3 Q. Okay. Did any of those CLEs focus on</p> <p>4 any particular area?</p> <p>5 A. Lots of different areas. Pharmacy is a</p> <p>6 very broad area of study. Probably focused more</p> <p>7 on psychiatry.</p> <p>8 Q. Do you subscribe to any pharmacy</p> <p>9 publications?</p> <p>10 A. Yes.</p> <p>11 Q. Do you -- what publications do you --</p> <p>12 sorry -- do you subscribe to?</p> <p>13 A. "American Journal of Hospital Pharmacy."</p> <p>14 I think I get the California --</p> <p>15 actually, it's not my subscription, but the</p> <p>16 "California Pharmaceutical Journal," I think is</p> <p>17 the name of it, and "Hospital Pharmacy."</p> <p>18 There's a few other things that -- and I</p> <p>19 don't pay money for them, but they send them to me</p> <p>20 anyway.</p> <p>21 Q. Okay. Regularly read those</p> <p>22 publications?</p>	<p>1 A. Yes.</p> <p>2 Q. On how many occasions?</p> <p>3 A. A few. I'm not sure how many. Several</p> <p>4 times.</p> <p>5 Q. Would you say that you've written these</p> <p>6 articles recently, in the past -- over your</p> <p>7 career?</p> <p>8 A. I wrote an article quite recently for</p> <p>9 "Hospital Pharmacy." It's an editorial on ethics</p> <p>10 and pharmacy.</p> <p>11 Q. Did that -- you said that was for the</p> <p>12 hospital pharmacy.</p> <p>13 A. "Hospital Pharmacy."</p> <p>14 It's one of the journals I get.</p> <p>15 Q. And did the journal relate to ethics in</p> <p>16 respect to hospital pharmacy or pharmacy in</p> <p>17 general?</p> <p>18 A. Pharmacy in general.</p> <p>19 Q. Okay. I would like to switch areas.</p> <p>20 Where did you first work after you</p> <p>21 received your degree, your BS from Oregon State?</p> <p>22 A. I started at Payless Drugs in Medford,</p>
Page 23	Page 25
<p>1 A. Not real regularly, to be honest.</p> <p>2 Q. Okay. And what sort of time frame do</p> <p>3 you read them?</p> <p>4 A. On occasion if I'm going to go to lunch</p> <p>5 and I go without a companion, I'll grab one of</p> <p>6 those as I'm going out the door so -- really a few</p> <p>7 times a year probably.</p> <p>8 Q. Okay. Are you a member of any</p> <p>9 professional society or organization?</p> <p>10 A. Yes. I'm a member of the American</p> <p>11 Cancer Society of Health System Pharmacists, ASHP,</p> <p>12 the California Society of Health System</p> <p>13 Pharmacists, CSHP, and CPNP, College of</p> <p>14 Psychiatric and Neuro -- Neurological Pharmacists,</p> <p>15 I think it is.</p> <p>16 Q. CPNP was that?</p> <p>17 A. CPNP.</p> <p>18 I'm not sure if it would fit in to extra</p> <p>19 training or not, but I'm board certified in</p> <p>20 psychiatric pharmacy.</p> <p>21 Q. Okay. Have you ever written an article</p> <p>22 for a publication?</p>	<p>1 Oregon, and I worked as an intern until about</p> <p>2 November of 1980.</p> <p>3 At that point I got my Oregon license,</p> <p>4 and I continued working as a pharmacist until July</p> <p>5 of 1981.</p> <p>6 Q. What were your responsibilities during</p> <p>7 your time at Payless?</p> <p>8 A. Fill prescriptions, stock shelves,</p> <p>9 counsel with patients, typical pharmacist things.</p> <p>10 Q. Did you ever submit Medicaid claims when</p> <p>11 you worked at Payless?</p> <p>12 A. Sure.</p> <p>13 Q. What kind of information did you provide</p> <p>14 on those claims?</p> <p>15 A. It was all done electronically. We</p> <p>16 didn't fill out paper forms.</p> <p>17 Q. Uh-huh.</p> <p>18 A. So it was essentially the kinds of</p> <p>19 things that you have to put in to the computer to</p> <p>20 fill a prescription, patient's name, what is the</p> <p>21 drug, number of tablets, the -- days supply.</p> <p>22 Now, we're talking back then. I don't</p>

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<p style="text-align: right;">Page 26</p> <p>1 remember whether we did days supply or not, who</p> <p>2 was the doctor, things like that.</p> <p>3 Q. Did you have to submit price information</p> <p>4 for those claims?</p> <p>5 A. I had to submit how much we were</p> <p>6 charging.</p> <p>7 Q. How much the pharmacy was charging for</p> <p>8 the -- the drugs dispensed to the Medicaid</p> <p>9 beneficiary?</p> <p>10 A. Uh-huh.</p> <p>11 Q. Was that charge typically called a</p> <p>12 "usual and customary charge"?</p> <p>13 A. I'm not sure that I called it that.</p> <p>14 It was the charge -- to be very honest</p> <p>15 with you, I didn't pay a lot of attention to what</p> <p>16 the charge was that the computer set.</p> <p>17 They had a -- a pricing formula that</p> <p>18 priced things, and it sent the -- the claim</p> <p>19 electronically or -- actually, I don't know if it</p> <p>20 was -- it was electronically between me and</p> <p>21 wherever the central computer was.</p> <p>22 Q. Okay. Did you ever purchase drugs for</p>	<p style="text-align: right;">Page 28</p> <p>1 pharmacist at Patton State Hospital in San</p> <p>2 Bernardino, California.</p> <p>3 Q. And what were your responsibilities as a</p> <p>4 pharmacist at the -- the hospital?</p> <p>5 A. Patton is a psychiatric hospital</p> <p>6 primarily for criminal offenders, and my job was</p> <p>7 not much in the way of ordering drugs or things</p> <p>8 like that.</p> <p>9 I did drug regimen reviews, where I</p> <p>10 would review the drugs that a patient is taking,</p> <p>11 and if I saw a problem, I'd make a comment to the</p> <p>12 doctor.</p> <p>13 I taught classes on use of those drugs</p> <p>14 in -- in patients to -- medical students,</p> <p>15 actually, to -- I taught some classes on what the</p> <p>16 various mental illnesses were and how the drugs</p> <p>17 affected patients to various groups of people.</p> <p>18 I set up a satellite pharmacy in one of</p> <p>19 the outlying buildings, and we ran that.</p> <p>20 I reviewed orders that the doctors</p> <p>21 wrote, make sure that they made sense.</p> <p>22 Q. Okay. How long were you at Patton State</p>
<p style="text-align: right;">Page 27</p> <p>1 Payless when you worked there?</p> <p>2 A. I ordered drugs, sure.</p> <p>3 Q. Did you ever discuss the prices of the</p> <p>4 drugs you ordered for Payless?</p> <p>5 A. I don't remember doing so, but I'm --</p> <p>6 you know, very possibly did.</p> <p>7 Q. Okay. Did you -- were you aware of the</p> <p>8 prices that Payless paid for the drugs it ordered?</p> <p>9 A. I don't know how much Payless paid for</p> <p>10 those.</p> <p>11 I do know what the -- you know, I saw</p> <p>12 the list price on the microfiche, or Red Book, or</p> <p>13 whatever document I was looking at.</p> <p>14 Q. And was that list price an AWP, an</p> <p>15 Average Wholesale Price?</p> <p>16 A. I think so. I don't remember.</p> <p>17 Probably was.</p> <p>18 This is going back quite a ways.</p> <p>19 Q. Yes.</p> <p>20 How about after Payless?</p> <p>21 What was your next job after Payless?</p> <p>22 A. After Payless I took a job as a</p>	<p style="text-align: right;">Page 29</p> <p>1 Hospital?</p> <p>2 A. I was there for four years.</p> <p>3 Q. So you left Patton somewhere around</p> <p>4 1985; is that correct?</p> <p>5 A. Uh-huh.</p> <p>6 Q. And where did you go next?</p> <p>7 A. I took a promotion to pharmaceutical --</p> <p>8 excuse me -- Pharmacist 2 at California</p> <p>9 Institution for Men Chino. That was an 80-bed</p> <p>10 hospital and a 5 to 6,000-bed prison.</p> <p>11 Q. You said that was the California</p> <p>12 Institute for Men?</p> <p>13 A. Institution for Men.</p> <p>14 Q. Okay. And were your responsibilities at</p> <p>15 the California Institution for Men any different</p> <p>16 than at Patton State Hospital?</p> <p>17 A. Yeah.</p> <p>18 I was in charge of the pharmacy, so</p> <p>19 there were a lot of administrative kinds of things</p> <p>20 to do.</p> <p>21 Q. Did you order pharmaceuticals during</p> <p>22 your time at the California Institution for Men?</p>

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<p>1 A. Yes.</p> <p>2 Q. Were you aware of the prices for the</p> <p>3 drugs you ordered in that role?</p> <p>4 A. The microfiche had prices, and I also</p> <p>5 had a -- a book of the contract prices that the --</p> <p>6 Department of General Services got for us.</p> <p>7 Q. And were the prices on the microfiche</p> <p>8 the list -- similar to the list prices that you</p> <p>9 mentioned earlier?</p> <p>10 A. Yes.</p> <p>11 Q. And the contract price, how did they</p> <p>12 compare to the prices on the microfiche, the list</p> <p>13 prices?</p> <p>14 A. Typically were lower.</p> <p>15 Q. Is it fair to say that the -- the Office</p> <p>16 of General Services negotiated lower prices</p> <p>17 through contracts?</p> <p>18 MR. FISHER: Objection as to form.</p> <p>19 THE WITNESS: The word "negotiated" is</p> <p>20 likely not a correct word.</p> <p>21 They had a contract process where they</p> <p>22 received bids.</p>	<p>1 Q. And where did you next work?</p> <p>2 A. I took a job here.</p> <p>3 Q. And by "here" you mean the Department of</p> <p>4 --</p> <p>5 A. Of Health Services.</p> <p>6 Q. Okay. What was your title when you</p> <p>7 started with the Department of Health Services?</p> <p>8 A. Pharmaceutical Consultant 2.</p> <p>9 Q. And generally what were your</p> <p>10 responsibilities as a Pharmaceutical Consultant 2?</p> <p>11 A. When I first got there, my job was to</p> <p>12 review drugs and do the necessary regulatory</p> <p>13 paperwork to add drugs to the Medi-Cal formulary.</p> <p>14 Q. And by "Medi-Cal," you're referring to</p> <p>15 California's Medicaid program?</p> <p>16 A. Yes.</p> <p>17 Q. Did you have any other responsibilities</p> <p>18 when you first started?</p> <p>19 A. Learn the program.</p> <p>20 Q. And how did you go about to learn the</p> <p>21 program?</p> <p>22 A. I read the provider manual -- at least</p>
Page 31	Page 33
<p>1 BY MR. MALONEY:</p> <p>2 Q. So through the bidding process the</p> <p>3 Office of General Service contracted for lower</p> <p>4 prices than list prices?</p> <p>5 MR. FISHER: Objection as to form.</p> <p>6 THE WITNESS: They oftentimes were</p> <p>7 lower.</p> <p>8 BY MR. MALONEY:</p> <p>9 Q. Now, the list prices that were on the</p> <p>10 microfiche at the California Institution for Men,</p> <p>11 were those AWP's?</p> <p>12 A. Again, I think they were AWP's.</p> <p>13 Q. Do you know if -- are you familiar with</p> <p>14 Wholesale Acquisition Cost?</p> <p>15 A. I am now. I was not then.</p> <p>16 Q. Okay. Okay.</p> <p>17 And how long were you at the California</p> <p>18 Institution for Men?</p> <p>19 A. I was there for three years.</p> <p>20 Q. Okay. So, if my math is correct, that's</p> <p>21 about 1988?</p> <p>22 A. Uh-huh.</p>	<p>1 parts of it. It was thinner then than it is now.</p> <p>2 And -- and then my boss, who was Len</p> <p>3 Terra, would give me assignments of one kind or</p> <p>4 another.</p> <p>5 The job was just -- was not just adding</p> <p>6 drugs. It included legislative issues, doing bill</p> <p>7 analyses, dealing with patients and providers that</p> <p>8 were unhappy or needed help.</p> <p>9 Q. Did you read any materials other than</p> <p>10 the provider manual?</p> <p>11 A. Well, yes. I mean --</p> <p>12 Q. Over time?</p> <p>13 A. I read the newspaper. I read -- lots of</p> <p>14 things.</p> <p>15 Q. Well, in reference to learning the</p> <p>16 program when you first started and shortly after</p> <p>17 you first started, did you read materials in</p> <p>18 addition to the -- the provider manual?</p> <p>19 A. I looked through the regulations, Title</p> <p>20 22.</p> <p>21 Q. What were the -- what types of</p> <p>22 legislative issues did you work on?</p>

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<p>1 A. I can't remember very clearly.</p> <p>2 Just bills or proposals for bills.</p> <p>3 There was one the -- there were some</p> <p>4 proposals to create an open formulary for Medi-</p> <p>5 Cal, and I worked on that. That one comes to</p> <p>6 mind.</p> <p>7 Q. And, when you worked on a legislative</p> <p>8 issues, can you provide additional detail as to</p> <p>9 what you did on those types of projects?</p> <p>10 A. I typically wrote the bill analysis.</p> <p>11 Q. And what is a "bill analysis"?</p> <p>12 A. It is a document that -- you know, is</p> <p>13 the basis for the official policy from the</p> <p>14 Governor on a bill, we're going to oppose it,</p> <p>15 we're going to not oppose it, oppose if amended,</p> <p>16 oppose -- excuse me -- oppose unless amended, and</p> <p>17 -- with some backing as to why we would take that</p> <p>18 position.</p> <p>19 Q. So in addition to stating a policy</p> <p>20 position regarding a bill, the bill analysis would</p> <p>21 provide some sort of reasoning or support for that</p> <p>22 position?</p>	<p>1 or the Governor's official position regarding</p> <p>2 Medicaid legislative issues?</p> <p>3 A. You'd have to ask the Legislature on</p> <p>4 that.</p> <p>5 We -- you know, I -- I know that various</p> <p>6 people appear before the Legislature and testify,</p> <p>7 and we -- whether they listen or not is another</p> <p>8 question</p> <p>9 Q. And did -- by "those people" -- by</p> <p>10 "various people," do you mean that some DHS</p> <p>11 personnel testify or have testified before the</p> <p>12 Legislature regarding Medicaid legislative issues?</p> <p>13 A. It's my understanding that's the case.</p> <p>14 Q. Excuse me.</p> <p>15 Did your responsibilities as a</p> <p>16 Pharmaceutical Consultant 2 change over time?</p> <p>17 A. Yes. Yes.</p> <p>18 Q. How did they change?</p> <p>19 A. I've always had a -- affinity for data</p> <p>20 and computers. They like me and I like them.</p> <p>21 And so -- I started working a lot more</p> <p>22 with the design of the Medi-Cal claims processing</p>
Page 35	Page 37
<p>1 A. Typically. Typically.</p> <p>2 Q. And eventually this bill analysis</p> <p>3 reaches the Governor?</p> <p>4 A. After going through half a dozen steps</p> <p>5 of people approving it and their supervisors</p> <p>6 approving it, and it goes to agency, and it's</p> <p>7 approved, then eventually it would become the</p> <p>8 official position of the -- and I don't know if</p> <p>9 the -- Governor sees it at that point or not, but</p> <p>10 it becomes the official position of the Department</p> <p>11 and of the State -- or the Governor.</p> <p>12 I can't say that I'm the world's</p> <p>13 greatest expert on the workings of the Legislature</p> <p>14 and all these things.</p> <p>15 Q. Okay. In terms of -- what happens after</p> <p>16 the Governor or the Department takes an official</p> <p>17 position regarding a bill?</p> <p>18 Is that transmitted or communicated to</p> <p>19 the Legislature somehow?</p> <p>20 A. That's my understanding, that it is.</p> <p>21 Q. Do you have an understanding as to</p> <p>22 whether the Legislature considers the Department's</p>	<p>1 system, setting up things so that it would -- be</p> <p>2 able to create certain rules to pay for or not pay</p> <p>3 for drugs that -- depending upon situations with a</p> <p>4 patient, you know.</p> <p>5 The patient --</p> <p>6 We created a rule to control utilization</p> <p>7 of H2 blockers like Tagamet and things like that.</p> <p>8 Q. Did Medi-Cal process its own claims?</p> <p>9 A. No. It's -- they're processed by a</p> <p>10 fiscal intermediary. Currently it's EDS.</p> <p>11 Q. When -- when you first started at DHS,</p> <p>12 was EDS the fiscal intermediary?</p> <p>13 A. Yes.</p> <p>14 Q. Was there a point in time when EDS was</p> <p>15 not the fiscal intermediary?</p> <p>16 A. Yes.</p> <p>17 Q. Do you generally recall that time frame?</p> <p>18 A. I got here in November of '88, and EDS</p> <p>19 had recently taken over the contract from Computer</p> <p>20 Sciences Corporation.</p> <p>21 Q. Okay.</p> <p>22 A. So it was like in '87 they took it over,</p>

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<p style="text-align: right;">Page 38</p> <p>1 I think.</p> <p>2 Q. What other responsibilities did you take</p> <p>3 on as a Pharmaceutical Consultant 2 at DHS?</p> <p>4 A. Well, I was assigned to work on the RFP,</p> <p>5 which was for proposal for the news claims</p> <p>6 processing system in 1992.</p> <p>7 I was -- the pharmacist that was</p> <p>8 primarily involved in designing the system.</p> <p>9 Once the RFP was awarded I -- I reviewed</p> <p>10 the proposals, gave my input on that.</p> <p>11 Once the RFP was -- excuse me --</p> <p>12 awarded, then I was involved in the design of the</p> <p>13 system, and was for several years -- still</p> <p>14 involved to some degree.</p> <p>15 Q. Okay. Were there any other</p> <p>16 responsibilities that you took on that did not</p> <p>17 relate to claims processing?</p> <p>18 A. That I was -- that I was doing -- that I</p> <p>19 was not doing before?</p> <p>20 I don't think so.</p> <p>21 I mean, the -- the process for reviewing</p> <p>22 drug petitions has changed somewhat. We went to</p>	<p style="text-align: right;">Page 40</p> <p>1 A. When I first started there, he was the</p> <p>2 Pharmaceutical Consultant 2.</p> <p>3 Q. Okay.</p> <p>4 A. He was kind of the lead pharmacist, but</p> <p>5 was the same title that I had.</p> <p>6 Q. Okay. And eventually he moved on to</p> <p>7 other position?</p> <p>8 A. Yeah. They created a position for him.</p> <p>9 Q. Okay.</p> <p>10 A. Or better -- better organizational</p> <p>11 structure.</p> <p>12 Q. Okay. And after Len Terra who was your</p> <p>13 next supervisor?</p> <p>14 A. After my -- Len Terra was Kevin Gorospe.</p> <p>15 Q. Do you recall his title?</p> <p>16 A. Pharmaceutical Program Consultant.</p> <p>17 That was Len Terra -- Len's title also.</p> <p>18 Q. And I take it Mr. Gorospe has -- has</p> <p>19 taken other positions as well since that time?</p> <p>20 A. No. He's --</p> <p>21 Q. He has the same title?</p> <p>22 A. That's his job, yeah.</p>
<p style="text-align: right;">Page 39</p> <p>1 the negotiation model, but other than -- than</p> <p>2 that, my job stayed pretty similar.</p> <p>3 Q. Okay. Did you ever change positions</p> <p>4 within the Department of Health and Services?</p> <p>5 A. In 2004 or '5, I think, I became a</p> <p>6 Pharmaceutical Consultant 2 Supervisor and running</p> <p>7 -- was running a small analysis unit that does</p> <p>8 data mining, looking at the claims database for</p> <p>9 patterns.</p> <p>10 Q. And after you became a Pharmaceutical</p> <p>11 Consultant 2 Supervisor did you take on any other</p> <p>12 titles or positions at DHS?</p> <p>13 A. No.</p> <p>14 Q. Are you still with DHS?</p> <p>15 A. DHCS now.</p> <p>16 Q. DHCS now.</p> <p>17 And do you still hold the same title?</p> <p>18 A. Yes.</p> <p>19 Q. When you first started at DHS, do you</p> <p>20 recall who your supervisor was?</p> <p>21 A. Len Terra.</p> <p>22 Q. Do you recall what his title was?</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. Okay. And did you have a different</p> <p>2 supervisor after Ken Gorospe?</p> <p>3 A. No.</p> <p>4 Kevin is my supervisor now.</p> <p>5 Q. Okay.</p> <p>6 A. Don't have a lot of turnover in this</p> <p>7 operation.</p> <p>8 Q. Just in general over your career as a</p> <p>9 Pharmaceutical Consultant 2 and Pharmaceutical</p> <p>10 Consultant 2 Supervisor were you responsible for</p> <p>11 keeping abreast of developments in Medicaid as</p> <p>12 they relate to your role at DHS?</p> <p>13 A. Sure.</p> <p>14 I mean, one needs to keep up with --</p> <p>15 with their job.</p> <p>16 Q. In general how did you go about doing</p> <p>17 that?</p> <p>18 A. Various things that -- we can read, news</p> <p>19 -- news articles, listen to NPR. That's actually</p> <p>20 one of the best sources -- listening to some of</p> <p>21 those sources, news sources, reading journals,</p> <p>22 reading various articles on the Internet, or other</p>

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<p>1 sources when the Internet became available.</p> <p>2 Q. Did you ever read any government</p> <p>3 reports?</p> <p>4 A. I'm sure I did. Don't recall any</p> <p>5 specific ones.</p> <p>6 Q. In terms of the Medicaid program in</p> <p>7 general, Medicaid is a joint federal/state</p> <p>8 program; correct?</p> <p>9 A. That's my understanding.</p> <p>10 Q. And under this joint federal state</p> <p>11 program the Federal Government sets broad policy</p> <p>12 directives that Medi-Cal's required to -- to meet</p> <p>13 in order to participate in the program?</p> <p>14 A. That's my understanding.</p> <p>15 Q. And as a joint program both the Federal</p> <p>16 and State Governments contribute to the monies</p> <p>17 used to support the program; correct?</p> <p>18 A. That's my understanding.</p> <p>19 Q. Do you know generally how much the</p> <p>20 Federal Government contributes and how much</p> <p>21 California contributes?</p> <p>22 A. Well, under the stimulus rules that</p>	<p>1 reimbursement methodology for prescription drugs</p> <p>2 within federal guidelines; correct?</p> <p>3 A. With approval, yes.</p> <p>4 Q. So any prescription drug reimbursement</p> <p>5 methodology put forth by California Medicaid must</p> <p>6 be approved by CMS before it can be implemented?</p> <p>7 A. I believe so.</p> <p>8 Q. Okay. Are you aware of any regulation</p> <p>9 that controls what kind of price California can</p> <p>10 use as a basis for its reimbursement for</p> <p>11 prescription drugs?</p> <p>12 A. "Regulation" is a special meaning as</p> <p>13 opposed to a law.</p> <p>14 Are you talking about general -- a law</p> <p>15 or a regulation?</p> <p>16 Are you talking about regulation only?</p> <p>17 Q. Well, we'll start with a law first.</p> <p>18 Are you aware of any federal law that</p> <p>19 governs what type of price California can use as a</p> <p>20 basis for reimbursement for prescription drugs?</p> <p>21 A. I am not aware of -- of a federal law</p> <p>22 that would require us to use -- I assume you're</p>
Page 43	Page 45
<p>1 recently have been set, I think the ratio is</p> <p>2 supposed to change, but previous, and I don't know</p> <p>3 what that new share would be, but in the past in</p> <p>4 general it was a 50/50 split except for family</p> <p>5 planning products, and that's a 90/10 split.</p> <p>6 Q. Okay. But in general in the past before</p> <p>7 recent events the share relating to prescription</p> <p>8 drugs was approximately 50/50?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know the name of the federal</p> <p>11 agency that operates the Medicaid program on the</p> <p>12 federal level?</p> <p>13 A. In the past it was HCFA, Health Care</p> <p>14 Financing Administration. Now it's CMS, Centers</p> <p>15 for Medi-Cal/Medicaid Services, I think.</p> <p>16 Q. Okay. And under the joint program</p> <p>17 California has flexibility to attach its program</p> <p>18 to local needs subject to federal approval;</p> <p>19 correct?</p> <p>20 A. That's my understanding.</p> <p>21 Q. And in one -- one area that California</p> <p>22 can adjust to meet its local deals is the</p>	<p>1 talking about AWP as a basis for price versus</p> <p>2 something else?</p> <p>3 Q. Yes.</p> <p>4 A. I think -- federal law requires that we</p> <p>5 reimburse at the EAC, I think, the Estimated</p> <p>6 Acquisition Costs, but I don't recall that they</p> <p>7 specify what that is.</p> <p>8 I'm ding this from memory. I haven't</p> <p>9 looked at the law in a while.</p> <p>10 Q. Okay. Are you aware of any federal</p> <p>11 regulation that would govern what type of price</p> <p>12 California could use in determining estimated</p> <p>13 acquisition costs?</p> <p>14 A. Regulation, no.</p> <p>15 Q. Okay. Are you aware of any federal</p> <p>16 requirement that requires California Medicaid to</p> <p>17 make sure that beneficiaries have access to</p> <p>18 prescription drug benefits under the California</p> <p>19 Medicaid program?</p> <p>20 A. Restate that question, please.</p> <p>21 Q. Are you aware of a federal statute that</p> <p>22 requires California Medicaid to -- to make sure</p>

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<p style="text-align: right;">Page 46</p> <p>1 that its program provides sufficient access to</p> <p>2 beneficiaries who want prescription drug benefits?</p> <p>3 A. I am not aware of one.</p> <p>4 Q. Okay. Are you -- have you ever heard of</p> <p>5 the term "access to care" as -- as it relates to</p> <p>6 Medicaid?</p> <p>7 A. I think I have heard it -- that term.</p> <p>8 Q. What is your understanding of "access to</p> <p>9 care"?</p> <p>10 A. Like I say, I think I've heard the term.</p> <p>11 I don't know how -- if it's -- if that's</p> <p>12 a term that's used in the law, I don't know how it</p> <p>13 is defined.</p> <p>14 So -- I'm not sure I can help you very</p> <p>15 much on that one.</p> <p>16 Q. Well --</p> <p>17 A. You know, in general, patients should</p> <p>18 have access to care.</p> <p>19 Q. And is it your understanding that in</p> <p>20 general "access to care" means the ability to get</p> <p>21 care?</p> <p>22 A. I would think so -- but again, I --</p>	<p style="text-align: right;">Page 48</p> <p>1 boss told me to.</p> <p>2 Q. Okay. Have your supervisors at Medi-Cal</p> <p>3 instructed you to review various reports during</p> <p>4 your career at Medi-Cal?</p> <p>5 A. It's not so often that I would be</p> <p>6 explicitly instructed to read something, you know.</p> <p>7 But -- you know, I'm expected to keep up</p> <p>8 on things.</p> <p>9 Q. And as -- as you're required to keep up</p> <p>10 on things, does that include reviewing reports to</p> <p>11 the extent they relate to your responsibilities?</p> <p>12 A. If they come across my desk, yeah.</p> <p>13 This one never did.</p> <p>14 Q. Okay.</p> <p>15 A. I must say, it's interesting.</p> <p>16 Q. All right. Can you please turn to page</p> <p>17 2.</p> <p>18 A. Numbered 2 here?</p> <p>19 Q. Yes.</p> <p>20 A. Okay.</p> <p>21 Q. I'd like to direct your attention to the</p> <p>22 first sentence in the first full paragraph.</p>
<p style="text-align: right;">Page 47</p> <p>1 that's -- I'm trying to think where I've heard it.</p> <p>2 I read the newspaper and -- various</p> <p>3 sources like that, and, you know, I've heard the</p> <p>4 term at one time or another.</p> <p>5 MR. MALONEY: Okay. I'd like to mark</p> <p>6 this as Exhibit Walker 1.</p> <p>7 (Exhibit Walker 001 was marked for</p> <p>8 Identification.)</p> <p>9 BY MR. MALONEY:</p> <p>10 Q. Mr. Walker, I've handed you what has</p> <p>11 been marked as Exhibit Walker 1. Please take a</p> <p>12 minute to take a look at this document.</p> <p>13 A. It may take me more than a minute. I</p> <p>14 haven't seen this before.</p> <p>15 Interesting. I've never seen that.</p> <p>16 Q. So you don't recognize this document?</p> <p>17 A. No. Maybe I should get a copy.</p> <p>18 Q. Is this the type of document that you</p> <p>19 would review if you had received it when you</p> <p>20 worked at Medi-Cal?</p> <p>21 A. Had I received this document -- I might</p> <p>22 certainly have reviewed it -- particularly if my</p>	<p style="text-align: right;">Page 49</p> <p>1 That sentence states "As this review</p> <p>2 will demonstrate, pharmacies generally purchase</p> <p>3 drugs at prices that are discounted significantly</p> <p>4 off of AWP."</p> <p>5 Did I read that correctly?</p> <p>6 A. I think so.</p> <p>7 Q. And is that generally consistent with</p> <p>8 your understanding of AWP when you started at</p> <p>9 Medi-Cal?</p> <p>10 A. Yes.</p> <p>11 Q. And in the next paragraph the third</p> <p>12 sentence begins with "These purchases."</p> <p>13 A. Okay.</p> <p>14 Q. That sentence states "These purchases</p> <p>15 indicated an average of 15.93 percent below AWP."</p> <p>16 Did I read that correctly?</p> <p>17 A. Yes.</p> <p>18 Q. And by "these purchases" the author is</p> <p>19 referring to the purchases made during an OIG</p> <p>20 audit; is that correct?</p> <p>21 A. I believe so.</p> <p>22 Q. Do you know what the "OIG" is?</p>

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<p style="text-align: right;">Page 50</p> <p>1 A. Office of the Inspector General.</p> <p>2 Q. Is that an office with -- HCFA, what is</p> <p>3 now known as CMS?</p> <p>4 A. It's a federal office. I'm not sure if</p> <p>5 they were with HCFA or if they stood independent.</p> <p>6 I'm not sure what their relationship</p> <p>7 was.</p> <p>8 Q. But, in any, case it's a federal office?</p> <p>9 A. Yeah.</p> <p>10 Q. Okay. And this sentence here that --</p> <p>11 that I just read, "These purchases indicated an</p> <p>12 average of 15.93 percent below AWP," is that</p> <p>13 finding generally consistent with your</p> <p>14 understanding of the purchasing of pharmaceuticals</p> <p>15 when you started at Medi-Cal?</p> <p>16 A. I can honestly say I don't know.</p> <p>17 This is from 1985, from what I read.</p> <p>18 Q. Uh-huh.</p> <p>19 A. And I don't know that we were -- that</p> <p>20 things were at AWP-15.93 back then.</p> <p>21 Q. Okay.</p> <p>22 A. I truly don't know.</p>	<p style="text-align: right;">Page 52</p> <p>1 BY MR. MALONEY:</p> <p>2 Q. Mr. Walker, I'm going to show you what</p> <p>3 was previously marked as Gorospe Exhibit 26.</p> <p>4 A. Okay.</p> <p>5 Q. Sorry.</p> <p>6 Please take a minute to look at this and</p> <p>7 let me know when you're ready.</p> <p>8 A. Okay.</p> <p>9 I've looked through it.</p> <p>10 Q. Do you recognize this document?</p> <p>11 A. No.</p> <p>12 Q. Do you recognize any part of it?</p> <p>13 A. I recognize the arguments that are made</p> <p>14 in it, but I don't remember -- I didn't write</p> <p>15 this, and I don't remember that I ever saw it.</p> <p>16 Q. Okay. This document is entitled "Medi-</p> <p>17 Cal Pays Too Much For Prescription Drugs;" right?</p> <p>18 A. Yes.</p> <p>19 Q. And it appears to have a statement below</p> <p>20 the title referring to a State Controller's</p> <p>21 Office.</p> <p>22 It appears to be an audit of Medi-Cal</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Okay. But, in any event, it was your</p> <p>2 understanding when you started at Medi-Cal that</p> <p>3 pharmacies generally purchased drugs at prices</p> <p>4 that were discounted significantly from AWP?</p> <p>5 MR. FISHER: Objection as to form.</p> <p>6 THE WITNESS: I don't -- I don't know if</p> <p>7 the word "significantly" would be in there, but I</p> <p>8 knew that pharmacies sometimes purchase drugs at</p> <p>9 less than AWP.</p> <p>10 That would be accurate.</p> <p>11 MR. MALONEY: Okay. You can set that</p> <p>12 aside.</p> <p>13 THE WITNESS: Is this a good time to</p> <p>14 take a break?</p> <p>15 MR. MALONEY: Yes. Yes.</p> <p>16 VIDEOGRAPHER: We're now going off the</p> <p>17 video record at approximately 10:11.</p> <p>18 (Thereupon a recess was taken at</p> <p>19 10:11 a.m. and the deposition resumed at 10:24</p> <p>20 a.m.)</p> <p>21 VIDEOGRAPHER: We're now back on the</p> <p>22 video record at approximately 10:24.</p>	<p style="text-align: right;">Page 53</p> <p>1 reimbursement?</p> <p>2 A. I -- I can't say as to whether or not an</p> <p>3 audit was the source of this or not.</p> <p>4 Q. But, in any event, it appears to be a</p> <p>5 statement from a State Controller's Office?</p> <p>6 A. (Nodding head)</p> <p>7 Q. It regards Medi-Cal prescription drug</p> <p>8 reimbursement?</p> <p>9 A. Yes.</p> <p>10 Q. And below this statement there's a</p> <p>11 section entitled "Comments"?</p> <p>12 A. Uh-huh.</p> <p>13 Q. And does it appear to you that these</p> <p>14 comments were written by DHS in response to the</p> <p>15 State Controller's Office statement?</p> <p>16 MR. FISHER: Objection as to form.</p> <p>17 THE WITNESS: I've been reading this and</p> <p>18 trying to figure out who wrote what to who and who</p> <p>19 actually did the writing.</p> <p>20 I'm not sure.</p> <p>21 BY MR. MALONEY:</p> <p>22 Q. Okay. And attached -- actually, can you</p>

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<p style="text-align: right;">Page 54</p> <p>1 -- please turn to the second page of this exhibit.</p> <p>2 The last paragraph, that paragraph</p> <p>3 states "As for the method for accomplishing these</p> <p>4 reductions in pharmacy reimbursement, the</p> <p>5 Department has chosen the legislative budget</p> <p>6 process rather than the regulatory process because</p> <p>7 of the higher visibility of the budget process</p> <p>8 considering the impact upon pharmacy providers and</p> <p>9 beneficiaries, including beneficiary advocacy</p> <p>10 groups."</p> <p>11 Did I read that correctly?</p> <p>12 A. I think so.</p> <p>13 Q. And this paragraph seems to indicate</p> <p>14 that that comment was written by the Department,</p> <p>15 even though we don't know which Department;</p> <p>16 correct?</p> <p>17 MR. FISHER: Objection as to form.</p> <p>18 THE WITNESS: I don't know. I -- when I</p> <p>19 read the word "Department" I would guess that that</p> <p>20 is Department of Health Services.</p> <p>21 BY MR. MALONEY:</p> <p>22 Q. And is that because the Department of</p>	<p style="text-align: right;">Page 56</p> <p>1 Could you please turn back to the first</p> <p>2 page.</p> <p>3 THE WITNESS: Sure.</p> <p>4 BY MR. MALONEY:</p> <p>5 Q. In the statement at the top of the page</p> <p>6 -- the State Controller's Office states that it</p> <p>7 believes "The Medi-Cal drug reimbursement rate is</p> <p>8 too high for both the drug ingredient cost portion</p> <p>9 and the dispensing fee portion of the overall fee</p> <p>10 payment to pharmacies;" is that correct?</p> <p>11 A. You read it correctly.</p> <p>12 Q. Do you recall -- learning of this belief</p> <p>13 by the State Controller's Office during your time</p> <p>14 at Medi-Cal?</p> <p>15 A. I'm trying to remember about this</p> <p>16 particular instance --</p> <p>17 Well, I -- yeah, I remember this.</p> <p>18 Q. Do you recall generally when you learned</p> <p>19 of this?</p> <p>20 A. Well, this document appears to have been</p> <p>21 in the neighborhood of 1996.</p> <p>22 This is a 3-12-96 draft on page 22.</p>
<p style="text-align: right;">Page 55</p> <p>1 Health Services is responsible for setting or</p> <p>2 proposing changes to pharmacy reimbursement for</p> <p>3 Medi-Cal as indicated in this paragraph?</p> <p>4 A. The paragraph doesn't indicate that the</p> <p>5 Department has those responsibilities, but --</p> <p>6 Restate your question, please.</p> <p>7 Q. Is it fair to say that this statement</p> <p>8 was written by or on behalf of the Department of</p> <p>9 Health Services because that Department is</p> <p>10 responsible for changes to pharmacy reimbursement</p> <p>11 in the Medi-Cal program such as the changes</p> <p>12 referred to in this paragraph?</p> <p>13 MR. FISHER: Objection as to form.</p> <p>14 THE WITNESS: I'm trying to answer you</p> <p>15 correctly and concisely.</p> <p>16 I'm not sure how to answer your</p> <p>17 question.</p> <p>18 At the risk of belaboring this, ask me</p> <p>19 one more time, please.</p> <p>20 You're going to get tired.</p> <p>21 MR. MALONEY: Actually, I'll withdraw</p> <p>22 the question and we'll -- we'll move on.</p>	<p style="text-align: right;">Page 57</p> <p>1 So I would guess that this is in the</p> <p>2 neighborhood of 1996.</p> <p>3 Q. Okay. And -- the second sentence of</p> <p>4 this statement states "Relative to the drug</p> <p>5 ingredient cost segment the SCO recommends that</p> <p>6 Medi-Cal change from an Average Wholesale Price,</p> <p>7 AWP less 5 percent reimbursement to an AWP less 10</p> <p>8 percent reimbursement."</p> <p>9 Is that correct?</p> <p>10 A. Yes, you read it right.</p> <p>11 Q. Do you recall learning of such a</p> <p>12 proposal from the SCO some time in the</p> <p>13 neighborhood of 1996?</p> <p>14 A. I didn't remember that it was from the</p> <p>15 SCO, but, you know, we -- we worked on AWP-5</p> <p>16 changes and AWP-10.</p> <p>17 Q. Okay. And do you recall working on</p> <p>18 those proposed changes somewhere in the timeframe</p> <p>19 around 1996?</p> <p>20 A. I would be hard pressed to say that I</p> <p>21 remember the exact time frame.</p> <p>22 At the same time that this was happening</p>

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<p>1 I was involved in a lot of the claims processing 2 design. 3 I was not involved in the -- for the 4 most part I was not involved in -- you know, any 5 of the budget discussions as to should we go to 50 6 versus 10 versus 7 or whatever. 7 I do remember that when we decided to do 8 that I was given the assignment of making sure the 9 computer did it correctly. 10 Q. Okay. But you have no reason to believe 11 that this proposal by the SCO to change to AWP-10 12 percent did not take place somewhere in the time 13 frame of 1996? 14 MR. FISHER: Objection as to form. 15 THE WITNESS: I think your statement is 16 correct. I have no reason to believe that it 17 would not be correct. 18 BY MR. MALONEY: 19 Q. And in the "Comments" section on this 20 first page -- in the second paragraph this 21 paragraph states "We concur with the SCO's 22 recommendation for reducing drug ingredient cost</p>	<p>1 Do you have any reason to believe that 2 the proposal to go to WAC plus 7 percent was not 3 made some time in the time frame of 1996? 4 A. I would not disbelieve that. I'm not 5 sure about the exact time frame. 6 I'm guessing that this is about that 7 time. 8 Q. Okay. And back to the second page for 9 one moment. 10 The last paragraph that I read earlier, 11 this paragraph refers to the legislative budget 12 process as it relates to changes in pharmacy 13 reimbursement; correct? 14 A. Uh-huh. 15 Q. And this is similar to the testimony you 16 gave earlier about bill analyses, is that correct, 17 this process? 18 A. Well, they're similar in that they both 19 have to do with the Legislature, but it's really 20 two different processes. 21 Q. Okay. If Medi-Cal wanted to use the 22 legislative budget process to change its pharmacy</p>
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<p>1 reimbursement to pharmacies. The Governor's 2 proposed budget includes a proposal to AWP less 5 3 percent and Direct Price reimbursement elements 4 with AWP less 10 percent or Wholesale Acquisition 5 Cost, WAC, plus 7 percent, whichever is lower, on 6 a drug-by-drug basis." 7 Did I read that correctly? 8 A. Yes. 9 Q. Do you recall a proposal to change 10 reimbursement to AWP less 10 percent or WAC plus 7 11 percent, whichever is lower? 12 A. I vaguely remember some things about 13 that, yeah. 14 I can't say that it's as fresh in my 15 mind as what happened yesterday. 16 Q. Okay. Do you have any reason to believe 17 that this proposal did not take place around the 18 time frame of 1996? 19 A. Well, the proposal to go to WAC plus 20 didn't take place, so your statement would not be 21 correct. 22 Q. Well, I'll rephrase.</p>	<p>1 reimbursements, would it make a proposal to the 2 Legislature? 3 A. I'm not the expert on that. 4 You really ought to ask Kevin or 5 somebody else. 6 Q. Do you recall working on any such 7 proposal? 8 A. No. 9 Q. Okay. 10 Okay. You can set that aside. 11 Mr. Walker, I'm going to show you what 12 has previously been marked as Miller Exhibit 16. 13 Oh. Sorry. 14 Please take a minute to look at this 15 document, although I can tell you that my 16 questions will relate only to the cover page on 17 the inside of the first page and to page 4. 18 A. This section, this letter from Kathleen 19 Connell? 20 Q. Yes. 21 A. And then page 4, you say? 22 Q. Yes.</p>

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<p style="text-align: right;">Page 62</p> <p>1 A. I want to at least look through the rest 2 of it. 3 Okay 4 Q. Okay. Do you recognize this document? 5 A. Only -- I recognize the last page, 6 Wholesaler Acquisition Cost pricing, WAC, but the 7 rest of it I don't know that I ever saw. 8 Q. And actually that page was not supposed 9 to be stapled to this exhibit. 10 A. Oh. Oh. 11 Well, I do recognize what I was given -- 12 this last page. 13 Q. I apologize for that. 14 That appears to be a copy error. 15 With respect to the letter on the inside 16 of the cover page of this document, this letter 17 appears to be dated December 12th, 1996 from 18 Kathleen Connell, the Controller -- who is the 19 Controller of the State of California addressed to 20 Ms. Kimberly Belshe, Director of DHS. 21 A. Uh-huh. 22 Q. Is that correct?</p>	<p style="text-align: right;">Page 64</p> <p>1 She's the Controller of the State of 2 California. It kind of fits. 3 Q. Okay. Okay. 4 And, if you could, please turn to page 5 4. 6 A. Okay. 7 Q. Actually, I realize I should correct my 8 earlier statement. 9 My questions may go on to page 5. 10 A. Okay. 11 Q. Towards the bottom of page 4 there's a 12 section entitled "Medicaid Savings That Continue 13 to Require Legislative Action;" correct? 14 A. Yes. 15 Q. And the first sentence in this section 16 states "As SCO noted in the March audit, Medi-Cal 17 reimbursement rate for pharmaceuticals is too high 18 compared to other states and other major high- 19 volume purchasers of prescription drugs;" correct? 20 A. That's what it says. 21 Q. And the -- second paragraph states "DHS 22 attempted to rectify this problem, but its</p>
<p style="text-align: right;">Page 63</p> <p>1 A. Yes. 2 Q. And the first sentence of this letter 3 states "I am pleased to provide you with the 4 following Medi-Cal checkup which assesses progress 5 by the Department of Health Services, DHS, in 6 addressing the findings of the March 1996 audit of 7 the Medi-Cal program conducted by my office." 8 Does that refresh -- refresh your 9 recollection of a 1996 audit of the Medi-Cal 10 program? 11 A. I don't remember anything being called a 12 "checkup." 13 We get audited on a periodic basis. 14 I don't remember this one particularly. 15 Q. Okay. But you remember similar audits? 16 A. I remember that we have been audited at 17 one time or another by the SCO. 18 Q. Okay. And Kathleen Connell, as 19 Controller of the State of California, is the head 20 of the SCO; is that correct? 21 A. That's my understanding -- or State 22 Controller's Office.</p>	<p style="text-align: right;">Page 65</p> <p>1 legislative effort has not been -- not yet been 2 successful. A recommendation was included in the 3 Governor's budget proposal for fiscal year 1997 4 that would have lowered the rate and saved Medi- 5 Cal 127 million annually, however, this proposal 6 was not adopted by the State Legislature. As a 7 result, the Medi-Cal program continues to pay much 8 more for prescription drugs than is paid by other 9 major purchasers of drugs." Did I read that 10 correctly? 11 A. Yes. 12 Q. Does that refresh your recollection 13 regarding the AWP-10 percent or WAC plus 7 percent 14 proposal that was discussed with the previous 15 exhibit? 16 A. I remember at the time that we put forth 17 some proposals. 18 I don't remember if this is that 19 particular one, because it seems to me that I 20 recall that we lost in the Legislature at least 21 once, so this may very well have been that, that 22 time.</p>

17 (Pages 62 to 65)

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<p style="text-align: right;">Page 66</p> <p>1 Q. The -- the instance that you recall</p> <p>2 where DHS lost in the Legislature, is that what</p> <p>3 you're referring to?</p> <p>4 A. Yeah. Yeah.</p> <p>5 Q. Okay.</p> <p>6 A. A proposal was made to go to a different</p> <p>7 price, and we ended up not changing it.</p> <p>8 Q. Okay.</p> <p>9 A. I think.</p> <p>10 Q. Okay. If we could please turn back to</p> <p>11 the prior exhibit.</p> <p>12 A. To --</p> <p>13 Q. The exhibit was previously marked</p> <p>14 Gorospe 26.</p> <p>15 A. Oh, okay.</p> <p>16 Q. This is the exhibit that discusses a</p> <p>17 proposal to change reimbursement to AWP less 10</p> <p>18 percent or WAC plus 7 percent, whichever is lower;</p> <p>19 correct?</p> <p>20 A. I believe so, yeah.</p> <p>21 Q. Now, is it fair to say that as of the</p> <p>22 time of this proposal DHS was aware that WAC was a</p>	<p style="text-align: right;">Page 68</p> <p>1 THE WITNESS: I know that I built some</p> <p>2 spread sheets that incorporated WAC in as an</p> <p>3 option, and those spread sheets were given to Len</p> <p>4 Terra and --</p> <p>5 So I know that he at least probably was</p> <p>6 aware of that.</p> <p>7 BY MR. MALONEY:</p> <p>8 Q. Do you recall approximate when you</p> <p>9 created those spread sheets?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 A. You know, if we were working on this, it</p> <p>13 would be somewhere in the neighborhood of this</p> <p>14 time.</p> <p>15 Q. Okay. If we could go back to page 4 of</p> <p>16 Exhibit Miller 16, the checkup exhibit.</p> <p>17 A. Okay.</p> <p>18 Q. The continuation of this section on page</p> <p>19 4 on to page 5, the next paragraph, the one that -</p> <p>20 - the first paragraph on page 5, it states "DHS</p> <p>21 intends to consider incorporating changes in drug</p> <p>22 payments in the 1997-98 budget proposal. The SCO</p>
<p style="text-align: right;">Page 67</p> <p>1 price that was available to be used as a basis for</p> <p>2 reimbursement for prescription drugs?</p> <p>3 MR. FISHER: Objection as to form.</p> <p>4 THE WITNESS: DHS is a very large</p> <p>5 organization with thousands of people.</p> <p>6 I was aware of it.</p> <p>7 BY MR. MALONEY:</p> <p>8 Q. Okay. If -- is it fair to say that if</p> <p>9 DHS made a proposal to change reimbursement to use</p> <p>10 WAC as a basis for reimbursement, that it was</p> <p>11 prepared to go through with that reimbursement</p> <p>12 basis if the Legislature accepted such a change?</p> <p>13 MR. FISHER: Objection as to form.</p> <p>14 THE WITNESS: That's asking me to</p> <p>15 predict what the upper management of DHS would</p> <p>16 decide to do, and I really can't do that.</p> <p>17 BY MR. MALONEY:</p> <p>18 Q. Okay. Do you know if any other staff at</p> <p>19 DHS around the time frame of 1996 were aware that</p> <p>20 WAC was a price that was available to be used as a</p> <p>21 basis for reimbursement for prescription drugs?</p> <p>22 MR. FISHER: Objection as to form.</p>	<p style="text-align: right;">Page 69</p> <p>1 urges that both DHS and the Governor's Office</p> <p>2 provide strong support to the passage of this</p> <p>3 proposal."</p> <p>4 Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall what proposal, if any, DHS</p> <p>7 incorporated in the 1997/'98 budget proposal?</p> <p>8 A. No.</p> <p>9 Q. Okay. And back to page 4, the second</p> <p>10 paragraph.</p> <p>11 Does this paragraph -- refers to</p> <p>12 "legislative effort by DHS."</p> <p>13 Do you recall testifying earlier about</p> <p>14 bill analyses and how based on a bill analysis DHS</p> <p>15 and possibly the Governor would take a position</p> <p>16 regarding a particular bill pending before the</p> <p>17 Legislature regarding pharmacy reimbursement?</p> <p>18 A. Uh-huh.</p> <p>19 Q. And did you testify earlier -- I believe</p> <p>20 you testified earlier, please correct me if I'm</p> <p>21 wrong, that once the Governor or the Department</p> <p>22 takes a position on a particular bill it's</p>

18 (Pages 66 to 69)

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<p style="text-align: right;">Page 70</p> <p>1 communicated to the Legislature?</p> <p>2 A. It is my understanding that that is the</p> <p>3 case.</p> <p>4 Q. Okay. And in terms of the -- of a</p> <p>5 legislative effort such as the one referred to in</p> <p>6 this paragraph, would the Governor or DHS also</p> <p>7 communicate to the Legislature its position</p> <p>8 regarding a particular proposal relating to</p> <p>9 pharmaceutical reimbursement in the Medi-Cal</p> <p>10 program?</p> <p>11 MR. FISHER: Objection as to form.</p> <p>12 Sorry.</p> <p>13 THE WITNESS: I don't know what -- what</p> <p>14 gets told to the Legislature by our -- Office of</p> <p>15 Legislative Services, I think it is.</p> <p>16 BY MR. MALONEY:</p> <p>17 Q. Do you know that something is</p> <p>18 communicated to the Legislature regarding things</p> <p>19 such as pharmacy -- pharmaceutical reimbursement</p> <p>20 when these issues arise?</p> <p>21 MR. FISHER: Objection as to form.</p> <p>22 THE WITNESS: Do I know it?</p>	<p style="text-align: right;">Page 72</p> <p>1 THE WITNESS: It's my understanding that</p> <p>2 other stakeholders talk to the Legislature, yes.</p> <p>3 BY MR. MALONEY:</p> <p>4 Q. Do you have an understanding of who</p> <p>5 those other stakeholders are -- generally?</p> <p>6 A. Particularly if we're talking about</p> <p>7 pharmaceutical pricing, the pharmacists' advocacy</p> <p>8 groups would be interested, and also the</p> <p>9 manufacturers.</p> <p>10 Q. Okay.</p> <p>11 A. Possibly others.</p> <p>12 Q. And the pharmacy advocacy groups, do you</p> <p>13 know any pharmacy advocacy groups in the State of</p> <p>14 California?</p> <p>15 A. Well, CPhA is the biggest.</p> <p>16 MR. MALONEY: Okay. Okay. I'm done</p> <p>17 with this document.</p> <p>18 You can set that aside. Thanks.</p> <p>19 THE WITNESS: Okay.</p> <p>20 CPhA is California Pharmacists</p> <p>21 Association.</p> <p>22 MR. MALONEY: Do you mind taking a short</p>
<p style="text-align: right;">Page 71</p> <p>1 I have reason to believe it, let's put</p> <p>2 it that way.</p> <p>3 I've never attended those meetings where</p> <p>4 something like that -- I never sat in on any of</p> <p>5 the discussions, so -- I don't know what is said</p> <p>6 in there.</p> <p>7 Q. Okay. I'll clarify my question.</p> <p>8 I'm not asking what is said to the</p> <p>9 Legislature. I'm asking if the Department's</p> <p>10 position in whatever form is communicated to the</p> <p>11 Legislature regarding legislative efforts to</p> <p>12 change pharmaceutical reimbursement when they</p> <p>13 arise.</p> <p>14 A. It is my understanding that that would</p> <p>15 be the case, but, again, hands-on, I have had</p> <p>16 little or nothing to do with that.</p> <p>17 Q. Okay. And are you aware or do you have</p> <p>18 an understanding that other stakeholders on Medi-</p> <p>19 Cal also communicate their position to the</p> <p>20 Legislature regarding changes in pharmaceutical</p> <p>21 disbursement in the medical forum?</p> <p>22 MR. FISHER: Objection to form.</p>	<p style="text-align: right;">Page 73</p> <p>1 break while I collect a few exhibits?</p> <p>2 MR. FISHER: That's fine.</p> <p>3 VIDEOGRAPHER: This concludes tape one</p> <p>4 of today's video deposition of Vic Walker.</p> <p>5 We're now going off video record at</p> <p>6 approximately eleven o'clock.</p> <p>7 (Thereupon a recess was taken at</p> <p>8 11:00 a.m. and the deposition resumed at 11:06</p> <p>9 a.m.)</p> <p>10 VIDEOGRAPHER: This is the beginning of</p> <p>11 disk two in today's videotaped deposition of Vic</p> <p>12 Walker.</p> <p>13 We are now back on the video record at</p> <p>14 approximately 11:06.</p> <p>15 MR. MALONEY: I'd like to have this</p> <p>16 marked as Exhibit Walker 2.</p> <p>17 (Exhibit Walker 002 was marked for</p> <p>18 Identification.)</p> <p>19 THE WITNESS: I think that's the one</p> <p>20 that's the tearing of this.</p> <p>21 Yeah. That's the same as this one that</p> <p>22 was given by mistake.</p>

19 (Pages 70 to 73)

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<p style="text-align: right;">Page 74</p> <p>1 MR. MALONEY: Right.</p> <p>2 BY MR. MALONEY:</p> <p>3 Q. If you could take a minute to look at</p> <p>4 what has been marked as Exhibit Walker 2 and let</p> <p>5 me know when you're ready.</p> <p>6 A. Okay.</p> <p>7 Q. Do you recognize this document?</p> <p>8 A. I do -- at least vaguely.</p> <p>9 I recognize my handwriting here.</p> <p>10 Q. Okay. So this handwritten statement</p> <p>11 towards the bottom of the page is yours?</p> <p>12 A. Yes.</p> <p>13 Q. And that states "30-day Notice to</p> <p>14 Providers;" is that correct?</p> <p>15 A. 30-day Plus Notice to Providers.</p> <p>16 Q. Oh, okay.</p> <p>17 This document is entitled "Wholesaler</p> <p>18 Acquisition Price, Pricing WAC. What is Needed to</p> <p>19 Make it Happen;" correct</p> <p>20 A. Uh-huh.</p> <p>21 Q. Do you recall generally when this</p> <p>22 document was created?</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Do you have any reason to believe that</p> <p>2 the -- consideration of WAC pricing as set forth</p> <p>3 in this document did not take place around the</p> <p>4 time of 1996?</p> <p>5 A. Do I have a reason to believe that it</p> <p>6 was not in that time period?</p> <p>7 Q. (Nodding head)</p> <p>8 A. No.</p> <p>9 Q. Okay.</p> <p>10 A. No, it likely was.</p> <p>11 Q. And this document in the first section,</p> <p>12 the first paragraph, first section is entitled</p> <p>13 "Resources Needed," and it states "File of</p> <p>14 Wholesaler Acquisition Costs from First DataBank,"</p> <p>15 and then in parentheses it says "Already requested</p> <p>16 from George Pennebaker. I don't have a target</p> <p>17 date of when we'll get it, but will call George</p> <p>18 and ask him to put it high on priority list."</p> <p>19 Is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. So at the time this document was written</p> <p>22 that account had access to or could have had</p>
<p style="text-align: right;">Page 75</p> <p>1 A. No, I -- I do not.</p> <p>2 Q. Do you recall whether you reviewed this</p> <p>3 document any time during your tenure at DHS?</p> <p>4 A. I wrote it.</p> <p>5 Q. You wrote it. Okay.</p> <p>6 As --</p> <p>7 A. This was -- this was a note to myself to</p> <p>8 help me organize what the task would be to make</p> <p>9 WAC happen.</p> <p>10 Q. Okay. And when we say "make WAC</p> <p>11 happen," we're talking in terms of the AWP-X</p> <p>12 percent or WAC plus some percent?</p> <p>13 A. Probably would be set up that way.</p> <p>14 Q. Okay.</p> <p>15 A. And it would be possible to go to a</p> <p>16 strictly WAC only, too, but, you know, we would</p> <p>17 look at a number of different options probably.</p> <p>18 Q. Okay. And that structure of WAC based</p> <p>19 reimbursement is similar to what we saw in the</p> <p>20 prior exhibit relating to the -- comments to the</p> <p>21 SCO statement; correct?</p> <p>22 A. Uh-huh.</p>	<p style="text-align: right;">Page 77</p> <p>1 access to WAC pricing from First DataBank;</p> <p>2 correct?</p> <p>3 Do you know if Medi-Cal ever received</p> <p>4 the list of WAC prices from First DataBank?</p> <p>5 MR. FISHER: Objection to form.</p> <p>6 THE WITNESS: I don't know if we</p> <p>7 received this particular one, but we did receive</p> <p>8 WAC prices at one time or another.</p> <p>9 We're currently getting them.</p> <p>10 BY MR. MALONEY:</p> <p>11 Q. Do you have a general idea of when Medi-</p> <p>12 Cal first received WAC prices?</p> <p>13 A. It was the -- I don't -- it -- I don't</p> <p>14 know when we first received them.</p> <p>15 Q. Okay. When is your first recollection</p> <p>16 of receiving WAC prices?</p> <p>17 A. I remember working with George</p> <p>18 Pennebaker, who was the pharmacist at EDS that</p> <p>19 kind of interfaced with us, and requesting back</p> <p>20 prices from First DataBank, but I don't recall if</p> <p>21 this was the first one or if there was anything</p> <p>22 before that.</p>

20 (Pages 74 to 77)

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<p style="text-align: right;">Page 78</p> <p>1 Q. Okay. And the next section in this</p> <p>2 document is entitled "Major Steps;" correct?</p> <p>3 A. Uh-huh.</p> <p>4 Q. And to paraphrase these major steps, the</p> <p>5 first step is to get the WAC file and run the</p> <p>6 numbers; correct?</p> <p>7 A. Uh-huh.</p> <p>8 Q. And the next step is to write the</p> <p>9 proposed language for what we want to do; correct?</p> <p>10 A. Uh-huh.</p> <p>11 Q. And "we" means DHS; correct?</p> <p>12 A. Well, let me characterize what it is we</p> <p>13 wanted to do.</p> <p>14 It may have been -- I don't remember</p> <p>15 exactly what it was that I was writing in terms of</p> <p>16 language, but it might have been -- easily been</p> <p>17 the instructions to EDS to make the changes.</p> <p>18 Q. And the next step is to get the legal</p> <p>19 basis to switch from AWP-to WAC plus?</p> <p>20 A. Uh-huh.</p> <p>21 Q. And it mentions either law change or</p> <p>22 regulation change?</p>	<p style="text-align: right;">Page 80</p> <p>1 Sorry.</p> <p>2 MR. MALONEY: I'd like to have this</p> <p>3 document marked as Exhibit Walker 3.</p> <p>4 (Exhibit Walker 003 was marked for</p> <p>5 Identification.)</p> <p>6 BY MR. MALONEY:</p> <p>7 Q. Mr. Walker, please take a moment to</p> <p>8 review this document and let me know when you're</p> <p>9 ready.</p> <p>10 A. Okay.</p> <p>11 Q. Do you recognize this document?</p> <p>12 A. Generally, yes.</p> <p>13 I recognize some of the arguments in</p> <p>14 here.</p> <p>15 Q. Do you recall reviewing this document at</p> <p>16 any time during your tenure at Medi-Cal?</p> <p>17 A. I don't remember the specific day that I</p> <p>18 sat down at my desk and looked at it.</p> <p>19 I may have written portions of it. I'm</p> <p>20 sure I didn't write the fiscal impact portion, but</p> <p>21 -- some of the other parts I might have written.</p> <p>22 Q. Okay. Do you recognize any of the</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Yes, it was in regulation at the time,</p> <p>2 and it was not written in law.</p> <p>3 Q. Okay. And do you know why it was</p> <p>4 written in regulation rather than law?</p> <p>5 A. No.</p> <p>6 Q. And the last major step is to write OIL</p> <p>7 and get SDN to make the change; correct?</p> <p>8 A. Yeah. And "OIL" is an Operating</p> <p>9 Instruction Setter to EDS to implement something,</p> <p>10 and "SDN" is a Systems Development Notice, which</p> <p>11 is instructions that we give to EDS to make some</p> <p>12 change in the system.</p> <p>13 Q. So those are the sort of procedural</p> <p>14 means that DHS uses to make changes?</p> <p>15 A. Yeah.</p> <p>16 Q. I'd like you to set this exhibit aside</p> <p>17 for a moment.</p> <p>18 I'd like --</p> <p>19 A. Getting towards lunchtime.</p> <p>20 MR. MALONEY: Oh. I'm sorry.</p> <p>21 What time is it?</p> <p>22 MS. BERWANGER: Not time to have lunch.</p>	<p style="text-align: right;">Page 81</p> <p>1 handwritten notes on this document?</p> <p>2 A. That looks like my handwriting.</p> <p>3 Q. Okay. And you're referring to the note</p> <p>4 on the top righthand corner?</p> <p>5 A. Yeah.</p> <p>6 Q. And --</p> <p>7 A. If you can't read that, one of the</p> <p>8 reasons I'm a very good pharmacist is because I</p> <p>9 can write just like doctors.</p> <p>10 I'm do my best to try to read it.</p> <p>11 It says "created 12-12-96 by --" and I</p> <p>12 don't know what that says.</p> <p>13 Q. Okay.</p> <p>14 A. Yeah, something.</p> <p>15 Q. And this document relates to the</p> <p>16 restructuring of drug ingredient cost</p> <p>17 reimbursement; correct?</p> <p>18 A. Yes.</p> <p>19 Q. And it provides a description of Medi-</p> <p>20 Cal's current at the time reimbursement formula;</p> <p>21 correct?</p> <p>22 A. Uh-huh.</p>

21 (Pages 78 to 81)

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<p style="text-align: right;">Page 82</p> <p>1 Q. And that formula is based on AWP less 5</p> <p>2 percent direct price for a selected list of</p> <p>3 manufacturers, State Maximum Allowable Ingredient</p> <p>4 Cost or the Federal Upper Limit; correct?</p> <p>5 A. Uh-huh, yes.</p> <p>6 Q. And the proposed restructuring of drug</p> <p>7 ingredient cost reimbursement would replace AWP</p> <p>8 less 5 percent and direct price with AWP less 10</p> <p>9 percent or Wholesale Acquisition Cost or 7</p> <p>10 percent, whichever is lower on a drug-by-drug</p> <p>11 basis; correct?</p> <p>12 A. That's what this says.</p> <p>13 Q. And in the "Proposal" section, the last</p> <p>14 sentence of the first paragraph states "This would</p> <p>15 more closely approximate actual acquisition costs</p> <p>16 of drugs by pharmacies;" correct?</p> <p>17 A. That's what it says.</p> <p>18 Q. And that refers to the proposed</p> <p>19 reimbursement change; correct?</p> <p>20 A. I believe so.</p> <p>21 Q. The next sentence under the "Proposal"</p> <p>22 section states "Most Medicaid states use the AWP</p>	<p style="text-align: right;">Page 84</p> <p>1 MR. FISHER: Objection as to form.</p> <p>2 THE WITNESS: If they agreed with me.</p> <p>3 BY MR. MALONEY:</p> <p>4 Q. Okay. And below this paragraph it</p> <p>5 states "Implementation Date, November 1, 1997;"</p> <p>6 correct?</p> <p>7 A. That was a target date.</p> <p>8 Q. Okay. So this proposal would have been</p> <p>9 considered before November 1, 1997; correct?</p> <p>10 A. I believe so.</p> <p>11 Q. Okay.</p> <p>12 A. It -- this is created 12-12-96, and we</p> <p>13 would have been scrambling to get that in place.</p> <p>14 Q. Okay. And the next section is entitled</p> <p>15 "Action Required," and it states "Requires change</p> <p>16 to or override of 22 CCR 51513, which specifies</p> <p>17 the ingredient cost reimbursement formula;"</p> <p>18 correct?</p> <p>19 A. Uh-huh.</p> <p>20 Q. And that regulation cited in this</p> <p>21 paragraph is a California regulation; correct?</p> <p>22 A. Yeah. Yeah, Title 22.</p>
<p style="text-align: right;">Page 83</p> <p>1 less X percent method exclusively with an average</p> <p>2 WAC plus 9.2 percent. Three states use a</p> <p>3 combination of AWP less X percent or WAC plus X</p> <p>4 percent, whichever is less."</p> <p>5 Did I read that correctly?</p> <p>6 A. Yes, although, if I were to rewrite</p> <p>7 this, I would say "AWP less X percent or Y plus Y</p> <p>8 percent."</p> <p>9 The two numbers might be different.</p> <p>10 Q. Okay. Is it fair to say that at this</p> <p>11 time the author of this document was aware that</p> <p>12 other State Medicaid programs used WAC as one</p> <p>13 basis for reimbursement for prescription drugs?</p> <p>14 MR. FISHER: Objection as to form.</p> <p>15 THE WITNESS: Well, assuming that I was</p> <p>16 the author, I was aware that there were other</p> <p>17 states that did that.</p> <p>18 BY MR. MALONEY:</p> <p>19 Q. And would it be fair to say that any</p> <p>20 other person at DHS who read this document would</p> <p>21 also be aware that other states used WAC as a</p> <p>22 basis for reimbursement for prescription drugs?</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. And would this change require</p> <p>2 legislative approval?</p> <p>3 MR. FISHER: Objection as to form.</p> <p>4 THE WITNESS: It would -- well, I'm not</p> <p>5 the attorney.</p> <p>6 I don't work in the Office of</p> <p>7 Administrative Law or in the Legislature, but we</p> <p>8 would have either had to change the regulation or</p> <p>9 get a law that would override that change.</p> <p>10 But we could have changed -- at least</p> <p>11 they ethically could have changed it in</p> <p>12 regulation.</p> <p>13 BY MR. MALONEY:</p> <p>14 Q. And the next section appears to be a</p> <p>15 section that lists the pros and cons of the</p> <p>16 proposal; correct?</p> <p>17 A. Uh-huh.</p> <p>18 Q. And it lists two pros of the proposal.</p> <p>19 The first one is to -- reduces drug</p> <p>20 expenditures by reducing ingredient cost</p> <p>21 reimbursement to make it more consistent with the</p> <p>22 actual acquisition of drugs and other third party</p>

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<p style="text-align: right;">Page 86</p> <p>1 payers; correct?</p> <p>2 A. Uh-huh.</p> <p>3 Q. And the second pro is would result in</p> <p>4 General Fund savings; correct?</p> <p>5 A. (Nodding head)</p> <p>6 Q. And there are three cons listed here.</p> <p>7 The first is "Will be opposed by</p> <p>8 pharmacy providers just as they opposed a previous</p> <p>9 legislative proposal on this issue;" correct?</p> <p>10 A. Yes. And there were a lot of things</p> <p>11 going on, and it's difficult for me to pinpoint</p> <p>12 which one we're talking about.</p> <p>13 Q. Okay. Did -- is it your understanding</p> <p>14 that many of the proposals were around this</p> <p>15 timeframe related to the AWP less X percent or WAC</p> <p>16 plus Y percent proposal or similar proposals?</p> <p>17 A. I don't remember at what point we</p> <p>18 brought WAC plus in to the -- the picture.</p> <p>19 So -- you know, I want to answer your</p> <p>20 question correctly and not mislead you.</p> <p>21 So I'm not sure how to answer your</p> <p>22 question.</p>	<p style="text-align: right;">Page 88</p> <p>1 ahold of WAC prices?</p> <p>2 A. Yes.</p> <p>3 I should say that the field that's on</p> <p>4 the First DataBank file that we used is called</p> <p>5 WHN, net wholesale, and that's the value that we</p> <p>6 used.</p> <p>7 I don't think there's a field on the --</p> <p>8 First DataBank NDDF national drug data file that's</p> <p>9 in -- that's titled "WAC."</p> <p>10 Q. So First DataBank provided you with what</p> <p>11 it called "WHN prices"?</p> <p>12 A. Yeah. Yeah.</p> <p>13 Q. And that's a title that First DataBank</p> <p>14 gave those prices?</p> <p>15 A. Yes, which means "net wholesale."</p> <p>16 Q. Okay. And your understanding of WAC as</p> <p>17 it's used in industry is based on your experience</p> <p>18 as a pharmacist?</p> <p>19 You -- didn't gain an understanding of</p> <p>20 the term "WAC" from First DataBank; correct?</p> <p>21 A. Well, actually -- I don't know that I</p> <p>22 heard First Data -- I don't remember hearing "WAC"</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. Okay. Is it fair to say that WAC was</p> <p>2 brought in to the picture at least by December</p> <p>3 12th, 1996?</p> <p>4 A. Sure looks like it.</p> <p>5 Q. Okay. Is it also fair to say that</p> <p>6 pharmacy providers opposed the legislative</p> <p>7 proposals related to the use of WAC as a basis for</p> <p>8 reimbursement?</p> <p>9 MR. FISHER: Objection as to form.</p> <p>10 THE WITNESS: I'm not sure --</p> <p>11 Well, I wasn't involved in the meetings.</p> <p>12 I'm not sure that WAC was put forth previously to</p> <p>13 this.</p> <p>14 BY MR. MALONEY:</p> <p>15 Q. Okay.</p> <p>16 A. You know, when -- when you say "WAC," I</p> <p>17 want to be precise, and I'm not sure that WAC was</p> <p>18 introduced previous to this.</p> <p>19 Q. Okay.</p> <p>20 A. It wasn't entirely -- it took some work</p> <p>21 to get ahold of those numbers.</p> <p>22 Q. Okay. But Medi-Cal did eventually get</p>	<p style="text-align: right;">Page 89</p> <p>1 when I was out actively practicing pharmacy.</p> <p>2 I don't -- you know, which continued</p> <p>3 until 1988.</p> <p>4 Had some side jobs on Saturdays and</p> <p>5 such, but, you know, I recall that I first heard</p> <p>6 the term "WAC" when I was working here.</p> <p>7 Q. Okay.</p> <p>8 A. So when you say in my practice as a</p> <p>9 pharmacist, I need to distinguish that.</p> <p>10 Q. Okay. The second con listed here is</p> <p>11 "Will undermine working relationship between the</p> <p>12 Department of Health Services and the California</p> <p>13 Pharmacist Association in efforts to develop a</p> <p>14 regulatory solution that reduces ingredient costs</p> <p>15 while recognizing other inequities in the</p> <p>16 reimbursement policies"?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Did I read that correctly?</p> <p>19 A. Yes.</p> <p>20 Q. At this time did DHS have a good working</p> <p>21 relationship with the California Pharmacists</p> <p>22 Association?</p>

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<p style="text-align: right;">Page 90</p> <p>1 MR. FISHER: Objection as to form.</p> <p>2 THE WITNESS: From what I could see we</p> <p>3 tried to maintain a good relationship with -- with</p> <p>4 CPhA.</p> <p>5 It's a lot easier than having an</p> <p>6 adversarial relationship, so, you know, both have</p> <p>7 the same goal of trying to make sick people well.</p> <p>8 BY MR. MALONEY:</p> <p>9 Q. And with respect to these first two cons</p> <p>10 listed here, was it your understanding at the</p> <p>11 time, if such a proposal went before the</p> <p>12 Legislature, the CPhA would be one group that</p> <p>13 would oppose such a legislative proposal?</p> <p>14 MR. FISHER: Objection as a form.</p> <p>15 THE WITNESS: Likely.</p> <p>16 I think I probably wrote these things.</p> <p>17 These were my opinions.</p> <p>18 But -- you know, it seems to me likely</p> <p>19 that they would oppose, you know, if we're trying</p> <p>20 to reduce their reimbursement, they probably won't</p> <p>21 like it.</p> <p>22 BY MR. MALONEY:</p>	<p style="text-align: right;">Page 92</p> <p>1 would have greater difficulty?</p> <p>2 A. The beneficiaries that trade with the</p> <p>3 pharmacies that refuse to accept Medi-Cal.</p> <p>4 Q. Okay.</p> <p>5 A. That's why I say "some."</p> <p>6 Q. Okay.</p> <p>7 A. They would have to go to a different</p> <p>8 pharmacy.</p> <p>9 Q. Do you know if this proposed</p> <p>10 restructuring of drug ingredient cost</p> <p>11 reimbursement was ever put before the Legislature?</p> <p>12 A. I don't know. I don't know.</p> <p>13 Q. Okay.</p> <p>14 A. Just don't know.</p> <p>15 Q. Is it fair to say that it was considered</p> <p>16 by DHS though?</p> <p>17 MR. FISHER: Objection as to form.</p> <p>18 THE WITNESS: My office certainly</p> <p>19 considered it.</p> <p>20 BY MR. MALONEY:</p> <p>21 Q. Okay. Do you recall who your supervisor</p> <p>22 was around the time that this document was</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Okay. And the third con listed here is</p> <p>2 "Some pharmacy providers will stop providing</p> <p>3 services to Medi-Cal beneficiaries because of the</p> <p>4 reduced payment."</p> <p>5 Did I read that correctly?</p> <p>6 A. Yes.</p> <p>7 Q. And is this a con because it would</p> <p>8 reduce medical beneficiaries' access to a</p> <p>9 prescription drug benefit?</p> <p>10 A. It would make it harder for</p> <p>11 beneficiaries to get -- some beneficiaries to get</p> <p>12 the benefits, so, yeah.</p> <p>13 Q. Okay. And do you have an idea as to</p> <p>14 what type of beneficiaries would have a more</p> <p>15 difficult time to get the benefit as it relates to</p> <p>16 this con listed here in this document?</p> <p>17 A. What do you mean by "what type"?</p> <p>18 Q. I believe you testified, please correct</p> <p>19 me if I'm wrong, that you said some beneficiaries</p> <p>20 would have greater difficulty in getting the drug</p> <p>21 benefit.</p> <p>22 Do you know which type of beneficiaries</p>	<p style="text-align: right;">Page 93</p> <p>1 written?</p> <p>2 A. It would have been Len Terra.</p> <p>3 Q. And do you know or recall that -- if he</p> <p>4 was involved in the consideration of this</p> <p>5 proposal?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall if -- or know if Len --</p> <p>8 submitted this proposal to his superior at the</p> <p>9 time?</p> <p>10 MR. FISHER: Objection as to form.</p> <p>11 THE WITNESS: At that time.</p> <p>12 I'm not -- I think it was probably Mike</p> <p>13 Neff, was the supervisor, and I believed that he</p> <p>14 would have.</p> <p>15 However, I -- I don't remember --</p> <p>16 Well, I was sure I was in meetings that</p> <p>17 -- that met with him and with Len's supervisor.</p> <p>18 I don't remember the time frame when</p> <p>19 Mike was there.</p> <p>20 MR. MALONEY: Okay.</p> <p>21 THE WITNESS: But whoever it was, he</p> <p>22 would have met with them.</p>

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<p style="text-align: right;">Page 94</p> <p>1 MR. MALONEY: Okay. We can set this</p> <p>2 document aside for now.</p> <p>3 I'd like to have this document marked as</p> <p>4 Exhibit Walker 4.</p> <p>5 (Exhibit Walker 004 was marked for</p> <p>6 Identification.)</p> <p>7 BY MR. MALONEY:</p> <p>8 Q. Mr. Walker, please take a minute to look</p> <p>9 at this document, although I can tell you that --</p> <p>10 my questions relate only to the first page</p> <p>11 generally and the second page.</p> <p>12 A. Okay.</p> <p>13 Okay. I've read the first two pages.</p> <p>14 Q. Okay.</p> <p>15 A. As long as we stick to those, we'll be</p> <p>16 all right.</p> <p>17 Q. If I move to another page, I'll give you</p> <p>18 additional time.</p> <p>19 A. Thank you.</p> <p>20 Q. Do you recognize this document?</p> <p>21 A. I do not.</p> <p>22 Q. This document is entitled</p>	<p style="text-align: right;">Page 96</p> <p>1 this area in 1996, the Department, in accord with</p> <p>2 your recommendation, sponsored a proposal in the</p> <p>3 Governor's 1997-98 budget to lower drug cost</p> <p>4 reimbursement to make it more consistent with</p> <p>5 actual drug purchasing practices of pharmacies --</p> <p>6 purchasing practice of pharmacies."</p> <p>7 Sorry.</p> <p>8 Is that correct?</p> <p>9 A. That's what it reads.</p> <p>10 Q. Do you recall if the proposal sponsored</p> <p>11 in the Governor's 1997/'98 budget was the AWP</p> <p>12 minus X percent or WAC plus Y percent change to</p> <p>13 reimbursement that we discussed with the previous</p> <p>14 three exhibits?</p> <p>15 A. I don't remember specifically, but given</p> <p>16 the other documents that I've seen, it's likely</p> <p>17 that it was that particular proposal.</p> <p>18 Q. Is it fair to say that whether or not</p> <p>19 the AWP plus X or WAC plus Y percent proposal was,</p> <p>20 in fact, the one in the '97/'98 budget proposal</p> <p>21 that DHS sponsored a proposal that was more</p> <p>22 consistent with actual drug purchasing practice of</p>
<p style="text-align: right;">Page 95</p> <p>1 "Implementation Status of State Controller's March</p> <p>2 1996 Audit Recommendations;" correct?</p> <p>3 A. Uh-huh.</p> <p>4 Q. And this seems to refer to the SCO audit</p> <p>5 that we discussed with respect to previous</p> <p>6 exhibits?</p> <p>7 A. It seems like that's probably the case.</p> <p>8 Q. Please turn to page 2.</p> <p>9 I'd like to direct your attention to the</p> <p>10 section entitled "Audit Issue 2 - Reduction of</p> <p>11 Prescription Drugs Costs."</p> <p>12 A. Uh-huh.</p> <p>13 Q. And underneath this title there's a</p> <p>14 section entitled "State Controller's</p> <p>15 Recommendation," which states "The Department</p> <p>16 should amend its regulations to reduce its maximum</p> <p>17 reimbursement rate for prescription drugs;"</p> <p>18 correct?</p> <p>19 A. Uh-huh.</p> <p>20 Q. And the next section is entitled</p> <p>21 "Update" and it states, "Following the</p> <p>22 Department's unsuccessful legislative effort in</p>	<p style="text-align: right;">Page 97</p> <p>1 pharmacies?</p> <p>2 MR. FISHER: Object as to form.</p> <p>3 THE WITNESS: Well, this document says</p> <p>4 that that was the case, and I -- I don't</p> <p>5 disbelieve it.</p> <p>6 BY MR. MALONEY:</p> <p>7 Q. Okay. Do you have any recollection of</p> <p>8 the proposal that was in that budget?</p> <p>9 A. I believe it's what we were talking</p> <p>10 about here.</p> <p>11 Q. Okay. And the next sentence in this</p> <p>12 paragraph states the proposal was not adopted by</p> <p>13 the Legislature?</p> <p>14 A. Uh-huh.</p> <p>15 Q. Do you recall the Legislature rejecting</p> <p>16 the proposal sponsored by DHS relating to a</p> <p>17 reduction in prescription drug costs in the</p> <p>18 '97/'98 budget?</p> <p>19 A. I recall that we were not successful in</p> <p>20 some of the proposals that we tracked.</p> <p>21 Q. And it was the Legislature's decision to</p> <p>22 not adopt these proposals that caused the</p>

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<p>1 Department to not be successful; correct?</p> <p>2 MR. FISHER: Objection as to form.</p> <p>3 THE WITNESS: Yeah. I object to form.</p> <p>4 I don't understand your question.</p> <p>5 BY MR. MALONEY:</p> <p>6 Q. I'll rephrase.</p> <p>7 It was the Legislature's decision to not</p> <p>8 adopt the proposal relating to reimbursement</p> <p>9 costs?</p> <p>10 A. That is my understanding.</p> <p>11 Q. Okay. And the next two sentences state</p> <p>12 "The Department has no reason to believe that the</p> <p>13 Legislature would be any more receptive to this</p> <p>14 proposal now than it has been during the past two</p> <p>15 years. Accordingly, the Department considers this</p> <p>16 item closed."</p> <p>17 Do you recall if proposals to reduce</p> <p>18 prescription drug reimbursement rates were made in</p> <p>19 both the 1997 and '98 budget and the previous</p> <p>20 budget?</p> <p>21 A. I think it likely.</p> <p>22 I remember trying to do it more than</p>	<p>1 Q. Mr. Walker, please take a minute to</p> <p>2 review this document and let me know when you're</p> <p>3 ready.</p> <p>4 A. Okay.</p> <p>5 Q. Do you recognize this document?</p> <p>6 A. I didn't write this document, but I</p> <p>7 recognize the -- the topic, and I think I probably</p> <p>8 wrote parts -- portions of it, that is to say, I</p> <p>9 gave information to Michael Alexander, and Mike</p> <p>10 wrote it.</p> <p>11 He did the final that went forward.</p> <p>12 Q. Is that consistent with the notation on</p> <p>13 the second page that states "Program Analyst</p> <p>14 contacted Vic Walker"?</p> <p>15 A. Uh-huh. Uh-huh.</p> <p>16 Q. And this document, it's entitled "Fiscal</p> <p>17 Analysis of Proposed Drug Rebate and Pricing</p> <p>18 Calculation Changes, parentheses, Direct Pricing</p> <p>19 to AWP-5 Percent, closed paren;" correct?</p> <p>20 A. Yes.</p> <p>21 Q. And generally this document evaluates a</p> <p>22 proposal to -- to eliminate direct price as a</p>
Page 99	Page 101
<p>1 once, and -- and being a bit unsuccessful.</p> <p>2 Q. Okay. Do you recall the Legislature</p> <p>3 being unreceptive to proposals to reduce</p> <p>4 prescription drug reimbursement rates around the</p> <p>5 time frame of 1996 to '97?</p> <p>6 MR. FISHER: Objection as to form.</p> <p>7 THE WITNESS: I don't -- I don't recall,</p> <p>8 but -- what the time frame was.</p> <p>9 I know that in those years, middle years</p> <p>10 kind of, that we put forth proposals to -- make a</p> <p>11 change from AWP minus to something else and were</p> <p>12 unsuccessful.</p> <p>13 BY MR. MALONEY: Okay. We can set that</p> <p>14 document aside for now.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MR. MALONEY: I'd like to have this</p> <p>17 document marked as Exhibit Walker 5.</p> <p>18 (Exhibit Walker 005 was marked for</p> <p>19 Identification.)</p> <p>20 THE WITNESS: Thank you.</p> <p>21 MR. MALONEY: I'm short one.</p> <p>22 BY MR. MALONEY:</p>	<p>1 basis for reimbursement; correct?</p> <p>2 A. Yes.</p> <p>3 Q. And in place of direct price it would</p> <p>4 apply the AWP-5 percent formula to the drugs that</p> <p>5 were formerly reimbursed based on direct price?</p> <p>6 Was it proposing 5 percent or was that</p> <p>7 left up in the air?</p> <p>8 A. Yeah, it did.</p> <p>9 The summary does sound like it's saying</p> <p>10 -- going to AWP-5.</p> <p>11 Q. And -- if we look at the calculations on</p> <p>12 the second page, is it fair to say that it changed</p> <p>13 to eliminate direct pricing for the drugs that are</p> <p>14 reimbursed based on that basis and reimbursing for</p> <p>15 those drugs on AWP-5 percent would increase</p> <p>16 reimbursement?</p> <p>17 MR. FISHER: Objection as to form.</p> <p>18 THE WITNESS: If we were to change from</p> <p>19 direct pricing to AWP-5 pricing, would it change</p> <p>20 the amount paid out to pharmacies?</p> <p>21 Yes.</p> <p>22 BY MR. MALONEY:</p>

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<p style="text-align: right;">Page 102</p> <p>1 Q. And is it also part of this proposal to</p> <p>2 -- negotiate more aggressively to obtain enhanced</p> <p>3 rebates to make up that cost difference?</p> <p>4 A. It looks like it, yeah.</p> <p>5 Q. Do you know if this proposal was ever</p> <p>6 put before the Legislature?</p> <p>7 MR. FISHER: Objection as to form.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 MR. MALONEY: Okay. We can set that</p> <p>10 aside for now.</p> <p>11 I'd like to mark this as Exhibit Walker</p> <p>12 6.</p> <p>13 (Exhibit Walker 006 was marked for</p> <p>14 Identification.)</p> <p>15 MR. MALONEY: Sorry.</p> <p>16 THE WITNESS: This looks like more of</p> <p>17 the same.</p> <p>18 BY MR. MALONEY:</p> <p>19 Q. Please take a minute to look at this</p> <p>20 document and let me know when you're ready.</p> <p>21 A. Okay. I don't know who wrote "Victor</p> <p>22 Walker R.Ph." on this. It's not my handwriting.</p>	<p style="text-align: right;">Page 104</p> <p>1 a "trailer bill" is?</p> <p>2 A. During the budget negotiations to try to</p> <p>3 get the budget passed every year they have a</p> <p>4 number of bills called "trailer bills," or at</p> <p>5 least they have at least one trailer bill. They</p> <p>6 may have more than one.</p> <p>7 I'm not an expert on this area, but I've</p> <p>8 overheard and been involved in discussions where</p> <p>9 they would put forth various changes to law to</p> <p>10 implement various financial issues such as this.</p> <p>11 Q. Okay. And the trailer bill language on</p> <p>12 the second page of this document is consistent</p> <p>13 with the proposal to eliminate direct price as a</p> <p>14 basis for reimbursement; correct?</p> <p>15 A. It -- it appears to do that.</p> <p>16 You know, it consists of what the</p> <p>17 proposal -- I'm not sure what that means, but, you</p> <p>18 know, it -- it appears to do exactly that.</p> <p>19 Q. And is it fair to say that this trailer</p> <p>20 bill language was drafted by DHS?</p> <p>21 MR. FISHER: Objection as to form.</p> <p>22 THE WITNESS: It probably was.</p>
<p style="text-align: right;">Page 103</p> <p>1 And I don't recall seeing this</p> <p>2 particular document, though I remember the issue.</p> <p>3 Q. Okay. And this document relates to the</p> <p>4 proposal we discussed in the previous exhibit;</p> <p>5 correct?</p> <p>6 A. It appears so.</p> <p>7 Q. And that's the elimination of direct</p> <p>8 price as a basis for reimbursement?</p> <p>9 A. (Nodding head)</p> <p>10 Q. And on the second and third pages of</p> <p>11 this document it would appear to be -- statutory</p> <p>12 or regulatory language?</p> <p>13 A. Statutory.</p> <p>14 Q. And on the second page -- the second</p> <p>15 page is entitled "Trailer Bill Language, Estimated</p> <p>16 Acquisition Cost Equalization, Medi-Cal Drug</p> <p>17 Rebate Program;" correct?</p> <p>18 A. Uh-huh.</p> <p>19 Q. And do you know what a "trailer bill"</p> <p>20 is?</p> <p>21 A. In general.</p> <p>22 Q. What is your understanding of -- of what</p>	<p style="text-align: right;">Page 105</p> <p>1 BY MR. MALONEY:</p> <p>2 Q. On --</p> <p>3 A. But I don't know who did it.</p> <p>4 Q. If we could turn to the third page.</p> <p>5 A. Okay.</p> <p>6 Q. Do you know what "budget control</p> <p>7 language" is?</p> <p>8 A. "Budget control language"?</p> <p>9 You know, I honestly don't know exactly</p> <p>10 what that -- I was wondering what the difference</p> <p>11 was between this and this.</p> <p>12 I don't know what "budget control</p> <p>13 language" is here.</p> <p>14 MR. MALONEY: Okay. I think we can set</p> <p>15 this aside.</p> <p>16 The next two exhibits might put us past</p> <p>17 12:00.</p> <p>18 Do we want to continue or stop?</p> <p>19 MR. FISHER: How are you doing food-</p> <p>20 wise?</p> <p>21 Do you want to get a bite to eat now or</p> <p>22 in a while?</p>

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<p>1 THE WITNESS: Now is a good time.</p> <p>2 MR. FISHER: Okay.</p> <p>3 THE WITNESS: We could keep going if you</p> <p>4 want to miss the rush.</p> <p>5 MR. FISHER: Are you doing well food-</p> <p>6 wise?</p> <p>7 Can you hang in there?</p> <p>8 THE WITNESS: Yeah. You got to be tough</p> <p>9 to work for Medi-Cal.</p> <p>10 MR. FISHER: Okay. You want to keep</p> <p>11 pushing forward?</p> <p>12 MR. MALONEY: All right. Sure.</p> <p>13 THE WITNESS: Maybe we'll get through</p> <p>14 all of them.</p> <p>15 MR. MALONEY: I'd like to mark this as</p> <p>16 Exhibit Walker 7.</p> <p>17 (Exhibit Walker 007 was marked for</p> <p>18 Identification.)</p> <p>19 BY MR. MALONEY:</p> <p>20 Q. Mr. Walker, please take a minute to look</p> <p>21 at this document and let me know when you're</p> <p>22 ready.</p>	<p>1 as requested. They have all been reviewed by</p> <p>2 Dave, and he has asked me to forward them to you."</p> <p>3 Do you know who Dave is?</p> <p>4 A. It's probably referring to Dave</p> <p>5 Mitchell.</p> <p>6 He was the Branch Chief of the Medi-Cal</p> <p>7 Benefits Branch at the time, and we were -- our --</p> <p>8 our unit sat within his branch.</p> <p>9 Q. Okay. And this E-mail was also sent to</p> <p>10 Kevin Gorospe; correct?</p> <p>11 A. Yes, he was cc'ed.</p> <p>12 Q. And was he your supervisor at the time?</p> <p>13 A. You know, I honestly don't know.</p> <p>14 I was thinking that Len Terra was, but</p> <p>15 he would surely have been on this -- this listing</p> <p>16 unless -- unless Kevin had taken over, so perhaps</p> <p>17 he had.</p> <p>18 Q. Okay.</p> <p>19 A. I know you interviewed Kevin.</p> <p>20 Refresh my memory as to when Kevin took</p> <p>21 over, and then --</p> <p>22 Q. Well, I don't think we need to go in to</p>
Page 107	Page 109
<p>1 A. Okay.</p> <p>2 Q. Do you recognize this document?</p> <p>3 A. I do not.</p> <p>4 I -- I see that my name is on it, but I</p> <p>5 don't remember seeing it.</p> <p>6 I could very well have.</p> <p>7 Q. This is an E-mail dated 24th 1999 from</p> <p>8 Marianne Lewis to what appears to be several DHS</p> <p>9 staff members; right?</p> <p>10 A. Yes.</p> <p>11 Q. It also appears to be addressed to</p> <p>12 someone at the E-mail address j-a-r-a-m-e-y</p> <p>13 @msn.com.</p> <p>14 Do you know who that might be?</p> <p>15 A. That I don't recognize. Jaramey -- no,</p> <p>16 I don't recognize that.</p> <p>17 Q. Okay. And the subject of this E-mail is</p> <p>18 "White papers Re proposals to reduce drug costs;"</p> <p>19 correct?</p> <p>20 A. Uh-huh.</p> <p>21 Q. And in the E-mail Ms. Lewis states</p> <p>22 "Attached are the proposals to reduce drug costs</p>	<p>1 that specifically.</p> <p>2 A. Okay. Well, I -- I'm guessing that</p> <p>3 Kevin was my supervisor at that point.</p> <p>4 Q. Okay. And the E-mail lists 13 proposals</p> <p>5 to reduce drug costs and appears to attach</p> <p>6 documents relating to those proposals; correct?</p> <p>7 A. Uh-huh.</p> <p>8 Q. And one of the proposals, number 9, is</p> <p>9 "Change basis for reimbursement of drugs;"</p> <p>10 correct?</p> <p>11 A. That's what it reads.</p> <p>12 Q. And if we look at the bottom of the</p> <p>13 page, there are icons which appear to represent</p> <p>14 attachments to the E-mail?</p> <p>15 A. Uh-huh.</p> <p>16 Q. And one of these icons is entitled "AWP</p> <p>17 minus - WAC Plus;" correct?</p> <p>18 A. Yes, uh-huh.</p> <p>19 Q. Do you recall reviewing a document</p> <p>20 entitled "AWP minus - WAC Plus"?</p> <p>21 A. No.</p> <p>22 Q. Around 1999?</p>

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<p>1 A. No.</p> <p>2 MR. MALONEY: Okay. We can set that</p> <p>3 aside for now.</p> <p>4 I'd like to mark this as Exhibit Walker</p> <p>5 8.</p> <p>6 (Exhibit Walker 008 was marked for</p> <p>7 Identification.)</p> <p>8 THE WITNESS: Thank you.</p> <p>9 BY MR. MALONEY:</p> <p>10 Q. Please take a minute to look at this</p> <p>11 document and let me know when you're ready.</p> <p>12 A. Okay.</p> <p>13 Q. Do you recognize this document?</p> <p>14 A. More or less.</p> <p>15 It's -- my style of writing certainly.</p> <p>16 It says that I prepared it.</p> <p>17 Q. Do you have any reason to believe you</p> <p>18 did not prepare it?</p> <p>19 A. No.</p> <p>20 Q. This document is entitled "Department of</p> <p>21 Health Services Proposals to Reduce Medi-Cal</p> <p>22 Expenditures for Pharmaceutical Products, Change</p>	<p>1 evaluation of the proposal to change the basis for</p> <p>2 reimbursement of drugs, is dated November 24th,</p> <p>3 '99 which is one day before the E-mail that is</p> <p>4 Exhibit Walker 7; correct?</p> <p>5 A. Yes. This is dated the 23rd.</p> <p>6 Q. Okay.</p> <p>7 A. Yeah. So -- this could easily be that.</p> <p>8 Q. Okay. Now, with respect to Exhibit</p> <p>9 Walker 8, the evaluation of the proposal, the</p> <p>10 document proposes to decrease the amount Medi-Cal</p> <p>11 is willing to pay for drugs to something that is</p> <p>12 more -- that more closely approximates the</p> <p>13 pharmacists' actual acquisition costs; correct?</p> <p>14 A. (Nodding head)</p> <p>15 Q. And it describes the reimbursement that</p> <p>16 was currently used by Medi-Cal for pharmacy</p> <p>17 providers?</p> <p>18 A. Well, that was used back then.</p> <p>19 Q. Right.</p> <p>20 And the reimbursement used by Medi-Cal</p> <p>21 at the time this proposal was evaluated was AWP-5</p> <p>22 percent direct price for about 11 major</p>
Page 111	Page 113
<p>1 Basis for Reimbursement of Drugs;" correct?</p> <p>2 A. Uh-huh.</p> <p>3 Q. And in general it discusses a proposal</p> <p>4 to implement the AWP minus X or WAC plus Y</p> <p>5 reimbursement change that we have discussed</p> <p>6 earlier; correct?</p> <p>7 A. Yes.</p> <p>8 Q. Based on your review of this document</p> <p>9 and your review of the prior exhibit, Exhibit</p> <p>10 Walker 7, do you think this document was the E-</p> <p>11 mail -- the attachment entitled "AWP-WAC Plus"</p> <p>12 document attached to Marianne Lewis' November</p> <p>13 24th, 1999 E-mail?</p> <p>14 MR. FISHER: Objection as to form.</p> <p>15 THE WITNESS: I can't say if this is</p> <p>16 that exact. It certainly could have been.</p> <p>17 If you have this -- you know, and if you</p> <p>18 tell me that this -- that this thing was printed</p> <p>19 from this document, then I would say perhaps, but</p> <p>20 I'm just guessing.</p> <p>21 BY MR. MALONEY:</p> <p>22 Q. Okay. But, in any event, Exhibit 8, the</p>	<p>1 manufacturers, State Maximum Allowable Ingredient</p> <p>2 Cost, and the Federal Upper Limit; correct</p> <p>3 A. Uh-huh.</p> <p>4 Q. And if we look at the -- I guess the</p> <p>5 second paragraph under the "Description" section</p> <p>6 it describes the proposed change to an AWP-X or</p> <p>7 WAC plus Y percent, whichever is lower proposal;</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. And the last sentence in that paragraph</p> <p>11 states "This would be --"</p> <p>12 I'm sorry.</p> <p>13 It states "This would more closely</p> <p>14 approximate actual acquisition costs of drugs by</p> <p>15 pharmacies;" correct?</p> <p>16 A. That's what it says.</p> <p>17 Q. And is it your understanding that this</p> <p>18 sentence is -- means that the proposed change</p> <p>19 would more closely approximate actual acquisition</p> <p>20 costs as opposed to the -- then existing</p> <p>21 reimbursement formula?</p> <p>22 MR. FISHER: Objection as to form.</p>

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<p>1 THE WITNESS: It was my -- or my</p> <p>2 understanding at the time certainly that -- that</p> <p>3 it would be closer to their actual acquisition</p> <p>4 cost than the formula that we were using at the</p> <p>5 time.</p> <p>6 BY MR. MALONEY:</p> <p>7 Q. And the next paragraph states -- the</p> <p>8 first two sentences state "According to federal</p> <p>9 requirements, pharmacy reimbursement for the drug</p> <p>10 cost component is supposed to be based on Medi-</p> <p>11 Cal's best estimate of what pharmacies actually</p> <p>12 pay for the drugs. Our current reimbursement</p> <p>13 formula no longer reflects purchasing practices of</p> <p>14 pharmacies. AWP-5 percent represents too high</p> <p>15 payment, whereas Direct Price represents too low</p> <p>16 payment, since pharmacies usually no longer buy</p> <p>17 drugs direct from manufacturers. The net effect</p> <p>18 is too high payment."</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. Was that your understanding at the time?</p> <p>22 A. Yes.</p>	<p>1 Q. If we could turn to the second page.</p> <p>2 The first paragraph states, "The Federal</p> <p>3 Office of Inspector General conducted an audit to</p> <p>4 determine actual acquisition costs of drugs by</p> <p>5 pharmacies. The report indicated that Medi-Cal</p> <p>6 reimbursement far exceeded actual purchasing costs</p> <p>7 of pharmacies. The overall estimate of the extent</p> <p>8 that AWP exceeded pharmacy invoice prices was 17.5</p> <p>9 percent for brand named drugs and 41.4 percent for</p> <p>10 generic drugs."</p> <p>11 Did I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. Was that your understanding at the time?</p> <p>14 A. Yes. I don't remember which OIG report</p> <p>15 -- I couldn't put my hands on it now, but -- if I</p> <p>16 wrote it, then I -- I believe that that was</p> <p>17 correct.</p> <p>18 Q. And you reviewed an OIG report in</p> <p>19 preparing this document?</p> <p>20 A. I'm not sure that I did that versus just</p> <p>21 asking -- you know, my supervisor, you know, and -</p> <p>22 - and he said, "Oh, I -- you know, remember that</p>
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<p>1 Q. There's a chart towards the bottom of</p> <p>2 this page that lists several states and what</p> <p>3 appears to be their -- Medicaid reimbursement</p> <p>4 formulas; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And each of the states listed here use</p> <p>7 WAC as a basis for reimbursement; correct?</p> <p>8 A. As part of their reimbursement.</p> <p>9 Colorado and Texas apparently were also</p> <p>10 using AWP on occasion.</p> <p>11 If you look at the prices that came from</p> <p>12 First DataBank, sometimes the wholesale -- net</p> <p>13 wholesale field for a given NDC was not populated,</p> <p>14 so in that case you would have to go get a price</p> <p>15 from someplace else.</p> <p>16 Q. And is that why this proposal also</p> <p>17 included AWP as a basis for reimbursement?</p> <p>18 A. As I recall.</p> <p>19 Q. And the proposal would choose whichever</p> <p>20 price is lower; correct?</p> <p>21 A. That's what we were -- what was being</p> <p>22 proposed then.</p>	<p>1 it was this number or that number."</p> <p>2 I -- I don't remember if I actually saw</p> <p>3 the OIG report or not.</p> <p>4 Q. But someone at DHS reviewed the OIG</p> <p>5 report that --</p> <p>6 A. Probably.</p> <p>7 Q. Okay. In any event, you believed the</p> <p>8 information was useful enough to use in this</p> <p>9 document; correct?</p> <p>10 A. Yeah.</p> <p>11 Q. And the next paragraph states "In other</p> <p>12 third party payor programs, parentheses, i.e.,</p> <p>13 private sector, reimbursement for drug cost is</p> <p>14 lower than Medi-Cal. Payment in such programs is</p> <p>15 usually in the range of AWP-17 percent to minus 10</p> <p>16 percent."</p> <p>17 Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. And was that -- is that consistent with</p> <p>20 your understanding at the time?</p> <p>21 A. Yes.</p> <p>22 Q. And the next section states "Legislation</p>

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<p style="text-align: right;">Page 118</p> <p>1 Required. This change can be implemented through 2 regulation, but the Department does not believe it 3 can sustain the legal challenges to the 4 regulations that will be brought to bear by its 5 opponents. The most certain way to implement a 6 new reimbursement schedule is through 7 legislation." 8 Did I read that correctly? 9 A. Yes. 10 Q. Do you recall who the opponents would be 11 to such a change? 12 A. I would assume that it would be -- 13 people that are likely to be financially or 14 otherwise harmed by that, you know, CPhA, the 15 pharmacists -- manufacturers possibly. 16 Q. Do you have personal knowledge of any 17 instance where a manufacturer opposed a change to 18 California reimbursement? 19 A. I can't -- I can't recall that there was 20 anything. I mentioned manufacturers because 21 they're certainly players in this. 22 Q. Do you have any personal knowledge of an</p>	<p style="text-align: right;">Page 120</p> <p>1 I didn't mention beneficiary advocacy 2 organizations previously, but they would be 3 stakeholders, too. 4 Q. And does this sentence refer to the 5 legislative process that we discussed earlier 6 where the stakeholders would communicate their 7 positions to the Legislature and the Legislature 8 would make a decision? 9 A. Well, this is talking about the -- the 10 previous thing was talking about changing through 11 regulation versus changing through legislation. 12 If we had attempted to change it through 13 regulation, then the organizations would have come 14 to us rather than going to the Legislature to 15 voice their objections because of the way the 16 regulatory process works. 17 Q. Right. Okay. 18 In the event that the -- proposed change 19 went through the legislative process, however, 20 these organizations would make their positions 21 known to the Legislature? 22 A. I would think so.</p>
<p style="text-align: right;">Page 119</p> <p>1 instance where the provider associations opposed a 2 change to reimbursement? 3 A. I was told that -- I wasn't in those 4 meetings, but I know that -- 5 Well, I take that back. 6 I've read various E-mails, and 7 newsletters, and things from CPhA where they were 8 quite upset that they were changing prices, so, 9 yes, they opposed. 10 Q. Okay. The next section states 11 "Legislative History. This identical proposal has 12 been made almost every year since the early 1990s, 13 but has been fought to a standstill in every 14 instance by the effective lobbying efforts of the 15 pharmacy provider organizations and beneficiary 16 advocacy organizations." 17 Did I read that correctly? 18 A. Yes. 19 Q. And was that your understanding of -- 20 the legislative history of this proposed change to 21 reimbursement when this document was prepared? 22 A. Yes.</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. And you recall reading articles and 2 reviewing other sources indicating that the 3 pharmacy provider organizations, in fact, did 4 oppose changes to reimbursement that were before 5 the Legislature; correct? 6 A. As I recall, yes. 7 Q. And at the bottom there's a section 8 entitled "Recommendation," and the recommendation 9 is to propose the change; correct? 10 A. Yes. 11 Q. And the next sentence states "Medi-Cal 12 reimbursement for drugs has become so high in 13 comparison to other third party payors changes 14 truly need to be made"? 15 A. True. 16 Q. And that's consistent with your 17 understanding at the time? 18 A. Yes. 19 Q. Do you know if the proposal was, in 20 fact, made? 21 A. I do not. 22 MR. MALONEY: Okay. Why don't we break</p>

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<p>1 for lunch.</p> <p>2 MR. FISHER: Okay.</p> <p>3 THE WITNESS: Sounds good to me.</p> <p>4 VIDEOGRAPHER: We are now going off the</p> <p>5 video record at approximately 12:15.</p> <p>6 (Thereupon a recess was taken at</p> <p>7 12:15 p.m. and the deposition resumed at 1:14</p> <p>8 p.m.)</p> <p>9 (David Zlotnick entered the</p> <p>10 proceedings and Janet Alexander began attending</p> <p>11 via conference call.)</p> <p>12 VIDEOGRAPHER: Back on the video record</p> <p>13 at approximately 1:14.</p> <p>14 BY MR. MALONEY:</p> <p>15 Q. Mr. Walker, do you recall participating</p> <p>16 in a drug task force?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall the time -- around what</p> <p>19 time frame?</p> <p>20 A. It was about 1999, fairly early in the</p> <p>21 Davis administration, as I recall.</p> <p>22 Q. And generally what was the purpose of</p>	<p>1 considered by the drug task force to reduce</p> <p>2 reimbursement?</p> <p>3 A. Yes.</p> <p>4 Q. Generally which ones do you recall?</p> <p>5 A. I remember that the State Controller, I</p> <p>6 think, was proposing AWP-15.</p> <p>7 There were -- Dr. Stahl proposed doing</p> <p>8 some things with atypical antipsychotics, and, you</p> <p>9 know, I haven't refreshed my memory with looking</p> <p>10 at that giant report that we put together, but</p> <p>11 those are two that stand out, and that's -- AWP-15</p> <p>12 might be of interest to you.</p> <p>13 MR. MALONEY: All right. Why don't we</p> <p>14 mark this document as -- actually --</p> <p>15 THE REPORTER: 9.</p> <p>16 MR. MALONEY: Exhibit 9.</p> <p>17 (Exhibit Walker 009 was marked for</p> <p>18 Identification.)</p> <p>19 THE WITNESS: Thank you.</p> <p>20 BY MR. MALONEY:</p> <p>21 Q. Please take a minute to look at this</p> <p>22 document and let me know when you're finished.</p>
Page 123	Page 125
<p>1 the drug task force?</p> <p>2 A. To look at the rapidly rising cost of</p> <p>3 drugs and see what could be done about it.</p> <p>4 Q. And do you recall the other members of</p> <p>5 the drug task force?</p> <p>6 A. Some of them.</p> <p>7 Q. Was that a large number of people who</p> <p>8 participated in the drug task force?</p> <p>9 A. Yeah.</p> <p>10 They rented a room in the Host Hotel</p> <p>11 down in the basement at the airport and had a big</p> <p>12 table, and it was filled all the way around.</p> <p>13 Q. Were there people from the pharmacy</p> <p>14 associations on the drug task force?</p> <p>15 A. CPhA?</p> <p>16 Yes, I think so.</p> <p>17 Certainly CPhA members.</p> <p>18 Q. And were there people from the</p> <p>19 beneficiary advocacy organizations on the task</p> <p>20 force as well?</p> <p>21 A. I recall some.</p> <p>22 Q. Do you recall any of the options</p>	<p>1 A. All right.</p> <p>2 Q. Do you recognize this document?</p> <p>3 A. Yes.</p> <p>4 Q. This is a March 17th, 2000 E-mail from</p> <p>5 Kevin Gorospe to many recipients; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And you are one of the recipients listed</p> <p>8 on this E-mail; correct?</p> <p>9 A. Yes.</p> <p>10 Q. Do you recall reviewing this E-mail on</p> <p>11 or around March 17th, 2000?</p> <p>12 A. I recall working on or being involved</p> <p>13 with this document.</p> <p>14 I don't recall whether or not I looked</p> <p>15 at that particular E-mail.</p> <p>16 Q. Okay. And the document that you're</p> <p>17 referring to is the Medi-Cal FFS Drug Task Force</p> <p>18 Matrix; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And this document lists many drug cost</p> <p>21 control options and contains a space for a pro/con</p> <p>22 analysis of each option; correct?</p>

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<p>1 A. (Nodding head)</p> <p>2 Q. Is it fair to say that these were the</p> <p>3 options considered by the drug task force to</p> <p>4 reduce pharmaceutical reimbursement costs?</p> <p>5 A. Yes.</p> <p>6 Q. If I could direct your attention to the</p> <p>7 page marked page 4 of 16.</p> <p>8 If you look at drug cost control option</p> <p>9 number 7, this option is changing ingredient cost</p> <p>10 reimbursement of drugs; correct?</p> <p>11 A. Uh-huh.</p> <p>12 Q. And this is essentially the AWP-X or WAC</p> <p>13 plus Y percent change that we've seen in previous</p> <p>14 proposals as far back as 1996; correct?</p> <p>15 A. Yes.</p> <p>16 Q. So this drug cost control option was one</p> <p>17 of the options considered by the drug task force</p> <p>18 in 2000; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And if we could turn to page 12 of 16.</p> <p>21 A. Okay.</p> <p>22 Q. And drug cost control option number 24</p>	<p>1 Walter Barnes, State Controller's office?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Do you know who Walter Barnes is?</p> <p>4 A. No.</p> <p>5 I remember that there was a</p> <p>6 representative from the State Controller's Office.</p> <p>7 I'm presuming that's probably him.</p> <p>8 MR. MALONEY:</p> <p>9 Q. Okay. We can set this aside now.</p> <p>10 Walker 10?</p> <p>11 I'd like to mark this as Exhibit Walker</p> <p>12 10.</p> <p>13 (Exhibit Walker 010 was marked for</p> <p>14 Identification.)</p> <p>15 MR. MALONEY: Whoops.</p> <p>16 THE WITNESS: Are you going to focus on</p> <p>17 any particular area?</p> <p>18 MR. MALONEY: Yes, I'm going to focus on</p> <p>19 page 23 and page 24.</p> <p>20 THE WITNESS: Save us some time.</p> <p>21 Okay, if we stick to 23 and 24, please.</p> <p>22 BY MR. MALONEY:</p>
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<p>1 is described as AB 1915, AWP-15 percent?</p> <p>2 A. Uh-huh.</p> <p>3 Q. And --</p> <p>4 A. That was the State Controller's one that</p> <p>5 I referred to earlier.</p> <p>6 Q. Okay. So this is a drug cost control</p> <p>7 option proposed by the State Controller's Office?</p> <p>8 A. (Nodding head)</p> <p>9 Q. And does AB 1915 refer to an Assembly</p> <p>10 Bill Number 1915?</p> <p>11 A. I think so.</p> <p>12 Q. So the State Controller's Office</p> <p>13 proposed this drug cost control option in the form</p> <p>14 of an Assembly Bill before the Legislature?</p> <p>15 A. I would assume so. I don't remember</p> <p>16 whether or not I looked at the bill or not.</p> <p>17 Q. Okay. And in general the proposal was</p> <p>18 to change reimbursement to AWP-15 percent?</p> <p>19 A. That's what the State Controller was</p> <p>20 proposing.</p> <p>21 Q. Okay. If you look at drug cost control</p> <p>22 option number 24 again, above the title it lists</p>	<p>1 Q. Do you recognize this document?</p> <p>2 A. Yes.</p> <p>3 Q. This is another version of the cost</p> <p>4 control options matrix; correct?</p> <p>5 A. Yeah, I think this is a further refined.</p> <p>6 Q. And this document lists the various cost</p> <p>7 control options considered by the drug task force</p> <p>8 and also the pros and cons relating to each</p> <p>9 option?</p> <p>10 A. Uh-huh.</p> <p>11 Q. And on page 24 the option to change</p> <p>12 ingredient cost reimbursement of drugs is -- is</p> <p>13 listed; correct?</p> <p>14 A. Yes, the State Controller's AWP-15.</p> <p>15 Q. I'm sorry.</p> <p>16 I'm referring to page 23.</p> <p>17 A. Oh. Go back to 23.</p> <p>18 What was your question?</p> <p>19 Q. This page sets forth the option to</p> <p>20 change ingredient cost reimbursement to the AWP or</p> <p>21 WAC --</p> <p>22 A. Yes.</p>

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<p>1 Q. -- structure; correct?</p> <p>2 A. Yes.</p> <p>3 Q. And it also lists the pros and cons of</p> <p>4 such a proposal?</p> <p>5 A. Yes.</p> <p>6 Q. And some of the pros relating to this</p> <p>7 reimbursement change would be -- it would save</p> <p>8 money from the General Fund; correct?</p> <p>9 A. Yeah.</p> <p>10 Q. And AWP-10 percent would be more</p> <p>11 comparable to other programs' reimbursement rates?</p> <p>12 A. Yes.</p> <p>13 Q. And that refers to other Medicaid</p> <p>14 programs; correct?</p> <p>15 A. I believe so. I believe so.</p> <p>16 I -- those numbers were somewhat more</p> <p>17 easy for me to get.</p> <p>18 Q. And it also states that -- this proposal</p> <p>19 would give the State flexibility in obtaining the</p> <p>20 best price; correct?</p> <p>21 A. Which line is that?</p> <p>22 Yes. Yes, that's correct.</p>	<p>1 cons for the State Controller's proposed cost</p> <p>2 control option; correct?</p> <p>3 A. Yes.</p> <p>4 Q. Excuse me.</p> <p>5 In the pros listed are that "The</p> <p>6 proposal would save the General Fund money, it's</p> <p>7 an understandable price structure, and pricing</p> <p>8 would be more in line with managed care plans, but</p> <p>9 dispensing fee is not addressed."</p> <p>10 A. Yes.</p> <p>11 Q. And -- the first con listed is "A</p> <p>12 blanket solution that may not be realistic.</p> <p>13 Managed care organizations have already squeezed</p> <p>14 much of the margin for community pharmacies out of</p> <p>15 reimbursement. While Medi-Cal reimbursement is</p> <p>16 higher than that of commercial plans, the extra</p> <p>17 margin may be the only thing keeping some</p> <p>18 providers afloat."</p> <p>19 A. True.</p> <p>20 Q. Does that also relate to potential</p> <p>21 access to care problem?</p> <p>22 A. Indirectly only.</p>
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<p>1 Q. And for the cons the first two cons</p> <p>2 listed here are "May put many pharmacies out of</p> <p>3 business, particularly those in high Medi-Cal</p> <p>4 population areas;" correct?</p> <p>5 A. Uh-huh.</p> <p>6 Q. "And may damage the pharmacy safety net</p> <p>7 for the most vulnerable population of Medi-Cal</p> <p>8 drug service users."</p> <p>9 A. Yes.</p> <p>10 Q. And do those cons relate to access to</p> <p>11 care and the impact of access to care that this</p> <p>12 change would have?</p> <p>13 A. Well, if -- if pharmacies go out of</p> <p>14 business that are serving Medi-Cal patients, and</p> <p>15 if they don't have alternatives close by or easily</p> <p>16 accessible to go to, you could run in to an access</p> <p>17 problem, yes.</p> <p>18 Q. And that was one of the issues</p> <p>19 considered with respect to this proposed change?</p> <p>20 A. Sure.</p> <p>21 Q. I'd like to turn to page 24.</p> <p>22 This page lists the various pros and</p>	<p>1 Q. And by "indirectly" do you mean that if</p> <p>2 a community pharmacy cannot make a profit it may</p> <p>3 go out of business and, therefore, Medi-Cal</p> <p>4 beneficiaries would not be able to get drugs from</p> <p>5 that pharmacy?</p> <p>6 A. Yes. Yes.</p> <p>7 Q. And in the next con, the second con, it</p> <p>8 states "reimbursement discounts need to be</p> <p>9 selectively determined based on the product type,</p> <p>10 source, et cetera. Any change in product</p> <p>11 reimbursement needs to be offset with some change</p> <p>12 providing reimbursement for professional services</p> <p>13 that include interventions."</p> <p>14 Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. And does that refer to the concept that</p> <p>17 if you reduce reimbursement you need to increase</p> <p>18 the dispensing fee?</p> <p>19 A. Yes.</p> <p>20 Well, reimbursement is the total of the</p> <p>21 dispensing fee plus the ingredient cost.</p> <p>22 So --</p>

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<p style="text-align: right;">Page 134</p> <p>1 Q. So --</p> <p>2 A. -- if you decrease the ingredient cost,</p> <p>3 you would need to have some kind of offset -- in</p> <p>4 some cases.</p> <p>5 Q. In dispensing?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay. And that was a consideration that</p> <p>8 was important to evaluating this proposal;</p> <p>9 correct?</p> <p>10 A. Sure.</p> <p>11 Q. And the third con states "May result in</p> <p>12 a significant decrease in the number of Medi-Cal</p> <p>13 pharmacy providers."</p> <p>14 This also relates to a potential access</p> <p>15 to care problem; correct?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know if this cost control options</p> <p>18 matrix was submitted to the Governor?</p> <p>19 A. I was told that it was -- or some</p> <p>20 version of it.</p> <p>21 I'm not sure this is the final version,</p> <p>22 but they put together a report and sent it on to</p>	<p style="text-align: right;">Page 136</p> <p>1 A. It does.</p> <p>2 Q. And on the third page your name appears</p> <p>3 associated with the California Department of</p> <p>4 Health Services; correct?</p> <p>5 A. That's right.</p> <p>6 Q. Does this appear to be an accurate</p> <p>7 representation of the member list of the drug task</p> <p>8 force?</p> <p>9 A. Yes.</p> <p>10 Nothing jumps out at me that is</p> <p>11 incorrect.</p> <p>12 MR. MALONEY: Okay. We can set that</p> <p>13 aside.</p> <p>14 Why don't we go off the record for a</p> <p>15 minute while I organize some exhibits.</p> <p>16 VIDEOGRAPHER: We are now going off the</p> <p>17 video record at approximately 1:38.</p> <p>18 (Thereupon a recess was taken at</p> <p>19 1:38 p.m. and the deposition resumed at 1:45</p> <p>20 p.m.)</p> <p>21 VIDEOGRAPHER: Back on the video record</p> <p>22 at approximately 1:45.</p>
<p style="text-align: right;">Page 135</p> <p>1 the Governor.</p> <p>2 Q. Do you know -- what decision the</p> <p>3 Governor made regarding the options considered?</p> <p>4 A. I'm not aware of one.</p> <p>5 MR. FISHER: Objection to form.</p> <p>6 THE WITNESS: I'm not aware that he made</p> <p>7 a decision.</p> <p>8 MR. MALONEY: Okay. You can set this</p> <p>9 aside.</p> <p>10 I believe we're at Walker 11.</p> <p>11 (Exhibit Walker 011 was marked for</p> <p>12 Identification.)</p> <p>13 BY MR. MALONEY:</p> <p>14 Q. Please take a look at this document and</p> <p>15 let me know when you're ready.</p> <p>16 A. Okay.</p> <p>17 Q. Do you recognize this document?</p> <p>18 A. I don't recall seeing this particular</p> <p>19 version of it, but I do remember seeing a -- an</p> <p>20 attendee list on a spread sheet.</p> <p>21 Q. And this appears to be the drug task</p> <p>22 force member list; correct?</p>	<p style="text-align: right;">Page 137</p> <p>1 MR. MALONEY: I'd like to mark this as</p> <p>2 Exhibit Walker 12.</p> <p>3 (Exhibit Walker 012 was marked for</p> <p>4 Identification.)</p> <p>5 BY MR. MALONEY:</p> <p>6 Q. Mr. Walker, please take a look at this</p> <p>7 document and let me know when you're ready.</p> <p>8 A. I'll be darn. I did do that one.</p> <p>9 Okay.</p> <p>10 Q. Do you recognize this document?</p> <p>11 A. No and yes. I didn't remember that I</p> <p>12 had done this, but it refreshes my memory.</p> <p>13 Q. Is this a document you created?</p> <p>14 A. I believe so, yes.</p> <p>15 Q. This is a Secondary Division Bill</p> <p>16 Analysis; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And this provides summary position, and</p> <p>19 supporting arguments, background findings, and</p> <p>20 other information relating to Bill AB 1915;</p> <p>21 correct?</p> <p>22 A. Yes.</p>

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<p>1 Q. Is this an example of the type of bill</p> <p>2 analyses that you perform as part of your</p> <p>3 responsibilities?</p> <p>4 A. Performs in the present tense. I</p> <p>5 haven't done one of these in a long time but back</p> <p>6 then, yes.</p> <p>7 Q. And is this an example of the type of</p> <p>8 bill analyses that you did when you began working</p> <p>9 at DHS?</p> <p>10 A. Yeah. Yeah.</p> <p>11 I -- I don't recall that I did one on</p> <p>12 this particular subject back then, but it's</p> <p>13 typical of the style that these are written in.</p> <p>14 Q. And I believe you testified earlier that</p> <p>15 when a bill analysis is complete it's eventually</p> <p>16 used as a basis for the Department or the Governor</p> <p>17 to take a position on a particular bill; correct?</p> <p>18 A. Yes, after it's gone through all the</p> <p>19 approvals.</p> <p>20 Q. Do you know if this bill analysis was</p> <p>21 approved?</p> <p>22 MR. FISHER: Objection as to form.</p>	<p>1 amended AB 1915?</p> <p>2 A. That's right.</p> <p>3 Q. And one of the supporting arguments for</p> <p>4 this position as stated here is that "This bill's</p> <p>5 provisions regarding pharmacy reimbursement are in</p> <p>6 conflict with federal Medicaid law governing the</p> <p>7 establishment of reimbursement rates for pharmacy</p> <p>8 providers and may result in an inadequate network</p> <p>9 of Medi-Cal pharmacy providers, particularly in</p> <p>10 rural areas."</p> <p>11 And is it your understanding that this</p> <p>12 supporting argument means that if the bill is</p> <p>13 adopted, there could be access to care problems in</p> <p>14 violation of federal Medicaid law?</p> <p>15 MR. FISHER: Objection as to form.</p> <p>16 THE WITNESS: There could be a --</p> <p>17 problem with access to care. Whether it -- that</p> <p>18 objects -- or breaks the federal law would have to</p> <p>19 be somebody else's decision.</p> <p>20 BY MR. MALONEY:</p> <p>21 Q. Was it your understanding at the time</p> <p>22 this document was created that access to care was</p>
Page 139	Page 141
<p>1 THE WITNESS: I don't know.</p> <p>2 BY MR. MALONEY:</p> <p>3 Q. With respect to this particular bill</p> <p>4 analysis, the summary states "The section of the</p> <p>5 bill that the Pharmaceutical Unit is analyzing</p> <p>6 reduces Medi-Cal's estimated acquisition cost for</p> <p>7 fee-for-service pharmacy drug reimbursement for</p> <p>8 most drugs from AWP-5 percent to AWP-15 percent;"</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And do you know what the "Pharmaceutical</p> <p>12 Unit" is?</p> <p>13 A. That was the organization that I worked</p> <p>14 in, supervised by Len Terra and then by Kevin</p> <p>15 Gorospe. They've since changed the structure.</p> <p>16 Q. Okay. And the position and supporting</p> <p>17 arguments stated in this bill analysis with</p> <p>18 respect to AB 1915 is to oppose unless amended;</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. So if this bill analysis was adopted by</p> <p>22 DHS, DHS's position would be to oppose unless</p>	<p>1 a requirement set forth in federal Medicaid law?</p> <p>2 MR. FISHER: Objection as to form.</p> <p>3 THE WITNESS: I believe that there is a</p> <p>4 requirement for that. I believe I knew it back</p> <p>5 then.</p> <p>6 BY MR. MALONEY:</p> <p>7 Q. Okay. Under the "Specific Findings"</p> <p>8 section -- does this section represent the</p> <p>9 findings made by DHS while formulating its</p> <p>10 position on this bill?</p> <p>11 MR. ZLOTNICK: Object to the form.</p> <p>12 THE WITNESS: It represents the findings</p> <p>13 that I made.</p> <p>14 You know, sometimes these things are</p> <p>15 changed after I -- it leaves my hands, and -- but</p> <p>16 this was my findings at the time.</p> <p>17 BY MR. MALONEY:</p> <p>18 Q. So if this was in an -- an officially</p> <p>19 adopted bill analysis by DHS, would those findings</p> <p>20 then be DHS's findings?</p> <p>21 MR. FISHER: Objection as to form.</p> <p>22 THE WITNESS: I -- I would think so,</p>

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<p style="text-align: right;">Page 142</p> <p>1 but, again, I'm not the -- I'm not the person that</p> <p>2 handles those things when it gets to that level,</p> <p>3 so I don't know if they would modify it or not.</p> <p>4 BY MR. MALONEY:</p> <p>5 Q. I'd like to turn to the second page and</p> <p>6 to the paragraph that begins with "When the</p> <p>7 proposed AWP --"</p> <p>8 A. Okay.</p> <p>9 Q. -- and the second sentence in that</p> <p>10 paragraph states "If California reduces its</p> <p>11 pharmacy reimbursement this drastically, Medi-Cal</p> <p>12 may suffer a serious patient access problem as</p> <p>13 providers disenroll from Medi-Cal rather than</p> <p>14 accept the reduced payment."</p> <p>15 Was that your understanding of the</p> <p>16 potential effect of this bill at the time this</p> <p>17 document was created?</p> <p>18 A. That was my opinion.</p> <p>19 Q. Okay. We can set that aside for now.</p> <p>20 All right. Do you know the -- outcome</p> <p>21 of the drug task force that you participated in?</p> <p>22 A. I'm not aware that there was an outcome.</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. This is a report entitled "Study of</p> <p>2 Medi-Cal Pharmacy Reimbursement" dated June 2002;</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. Did you review this document when --</p> <p>6 when it was issued?</p> <p>7 A. I eventually saw it. I'm not sure at</p> <p>8 what point that I saw it, and -- I didn't -- I</p> <p>9 read through it, yes.</p> <p>10 Q. Okay. And this was --</p> <p>11 A. And there's some points I missed, but,</p> <p>12 yeah, I read it.</p> <p>13 Q. This study was performed at the request</p> <p>14 of DHS; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Can you please turn to page 5.</p> <p>17 This page is entitled "Conclusions and</p> <p>18 Recommendations; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And under the section entitled</p> <p>21 "Ingredient Reimbursement Recommendations" the</p> <p>22 first sentence states "There was sufficient</p>
<p style="text-align: right;">Page 143</p> <p>1 You'd have to define what the "outcome" meant.</p> <p>2 Q. Was there any change to reimbursement</p> <p>3 implemented based on the work of the drug task</p> <p>4 force?</p> <p>5 A. No.</p> <p>6 Q. Was --</p> <p>7 A. Not that I recall.</p> <p>8 MR. MALONEY: Okay. All right. I think</p> <p>9 we're up to Exhibit 313.</p> <p>10 I'd like to mark as Exhibit 13 this</p> <p>11 document.</p> <p>12 (Exhibit Walker 013 was marked for</p> <p>13 Identification.)</p> <p>14 THE WITNESS: Thank you.</p> <p>15 You going to focus on any particular</p> <p>16 part?</p> <p>17 MR. MALONEY: Yes. I'm going to focus</p> <p>18 on pages 5 and 6.</p> <p>19 THE WITNESS: All right.</p> <p>20 BY MR. MALONEY:</p> <p>21 Q. Do you recognize this document?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 145</p> <p>1 evidence in the study of pharmacy acquisition cost</p> <p>2 to suggest that the Department's current</p> <p>3 ingredient cost allowance of the Average Wholesale</p> <p>4 Price, AWP, minus 5 percent provides for</p> <p>5 ingredient reimbursement in excess of a pharmacy's</p> <p>6 actual acquisition cost."</p> <p>7 A. Yes.</p> <p>8 Q. Did I read that correctly?</p> <p>9 A. Yes. Yes.</p> <p>10 Q. Is that consistent with your</p> <p>11 understanding at the time?</p> <p>12 A. Yes.</p> <p>13 Q. And is that consistent with your</p> <p>14 understanding throughout your career at DHS?</p> <p>15 A. Well, keep in mind when I first arrived</p> <p>16 here that we were paying at AWP, not at AWP-5, and</p> <p>17 after we implemented AWP-5 there is a period of</p> <p>18 time that I might have said that the -- AWP-5 is a</p> <p>19 good -- loss estimate.</p> <p>20 So when you say throughout my career --</p> <p>21 I couldn't say yes to that.</p> <p>22 Q. Okay. During the time that Medicaid</p>

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<p style="text-align: right;">Page 146</p> <p>1 reimbursed based on AWP did you have an</p> <p>2 understanding that reimbursement was in excess of</p> <p>3 pharmacies' actual acquisition costs?</p> <p>4 A. I had a general understanding of that.</p> <p>5 We hadn't gone out and done a survey or something</p> <p>6 like that.</p> <p>7 MR. MALONEY: Okay.</p> <p>8 VIDEOGRAPHER: We've got about four</p> <p>9 minutes left.</p> <p>10 MR. MALONEY: I'll finish this exhibit.</p> <p>11 BY MR. MALONEY:</p> <p>12 Q. And was there a time after California</p> <p>13 implemented the AWP-5 percent reimbursement that</p> <p>14 you reached an understanding that reimbursement</p> <p>15 based on AWP-5 percent was in excess of</p> <p>16 pharmacies' actual acquisition cost?</p> <p>17 A. I -- at some point I arrived at that</p> <p>18 conclusion. I don't know when.</p> <p>19 Q. It was before this report was issued</p> <p>20 though; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Was it well before this report was</p>	<p style="text-align: right;">Page 148</p> <p>1 support a differential reimbursement rate for</p> <p>2 generic drugs such as one between AWP-20 percent</p> <p>3 and AWP-25 percent."</p> <p>4 Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. When you reviewed this report, did you</p> <p>7 agree with this recommendation?</p> <p>8 A. In terms of those exact numbers, I don't</p> <p>9 know that I had an opinion. I hadn't done the</p> <p>10 study.</p> <p>11 But I agreed with the general findings,</p> <p>12 that AWP was -- not a good estimate of EAC at that</p> <p>13 point.</p> <p>14 MR. MALONEY: Okay. We can set that</p> <p>15 aside.</p> <p>16 We'll switch tape now.</p> <p>17 VIDEOGRAPHER: This concludes disk two</p> <p>18 of today's videotape deposition of Vic Walker.</p> <p>19 We're now off the record at</p> <p>20 approximately 2:08.</p> <p>21 (Thereupon a recess was taken at</p> <p>22 2:08 p.m. and the deposition resumed at 2:13</p>
<p style="text-align: right;">Page 147</p> <p>1 issued?</p> <p>2 A. Well, we have evidence in 1996 I was</p> <p>3 thinking that way.</p> <p>4 Q. Okay. The second paragraph under the</p> <p>5 "Ingredient Reimbursement Recommendation" section</p> <p>6 states in the first sentence "In light of these</p> <p>7 findings, we recommend that the Department should</p> <p>8 consider increasing the discount from the Average</p> <p>9 Wholesale Price for both single source and</p> <p>10 multiple source drugs."</p> <p>11 And by "single source drugs" the report</p> <p>12 is generally referring to brand drugs; correct?</p> <p>13 A. In general.</p> <p>14 Q. And "multiple source drugs" generally</p> <p>15 refers to generic drugs; correct?</p> <p>16 A. In general.</p> <p>17 Q. And the next sentence states, "The</p> <p>18 acquisition cost study indicates that the</p> <p>19 Department could justify setting ingredient</p> <p>20 reimbursement for brand name drugs at a level</p> <p>21 between at AWP-12 percent and AWP-15 percent," and</p> <p>22 it goes on to state that "The study would also</p>	<p style="text-align: right;">Page 149</p> <p>1 p.m.)</p> <p>2 VIDEOGRAPHER: This is the beginning of</p> <p>3 tape three in today's video deposition of Vic</p> <p>4 Walker.</p> <p>5 We're now back on the video record at</p> <p>6 approximately 2:13.</p> <p>7 MR. MALONEY: I'd like to mark this</p> <p>8 document as Exhibit Walker 14.</p> <p>9 (Exhibit Walker 014 was marked for</p> <p>10 Identification.)</p> <p>11 THE WITNESS: Thank you.</p> <p>12 Is this any different from the first</p> <p>13 one?</p> <p>14 MR. MALONEY: This document is entitled</p> <p>15 "Survey of Acquisition Costs --"</p> <p>16 THE WITNESS: Oh.</p> <p>17 MR. MALONEY: "-- of Pharmaceuticals."</p> <p>18 BY MR. MALONEY:</p> <p>19 If you'll take a moment to look at the</p> <p>20 document, I'm going to focus on page 4.</p> <p>21 A. I didn't recall that there were two</p> <p>22 different documents.</p>

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<p>1 Q. Okay. Do you recognize this document?</p> <p>2 A. I vaguely recall that there were two</p> <p>3 separate documents, though I didn't remember that</p> <p>4 'til I saw this.</p> <p>5 I -- am somewhat familiar with it --</p> <p>6 certainly familiar with the fact that a study was</p> <p>7 done by Myers and Stauffer.</p> <p>8 Q. Do you recall reviewing this document at</p> <p>9 or around the time it was issued?</p> <p>10 A. I don't -- I probably did.</p> <p>11 I think -- yes. I remember getting two</p> <p>12 .pdf documents and at least glancing through them.</p> <p>13 Q. Okay. And similar to the previous</p> <p>14 exhibit, this is a -- report prepared by Myers and</p> <p>15 Stauffer for the Department of Health Services;</p> <p>16 correct?</p> <p>17 A. Uh-huh.</p> <p>18 Q. And this document is entitled "A Survey</p> <p>19 of Acquisition Costs of Pharmaceuticals in the</p> <p>20 State of California"?</p> <p>21 A. Yes.</p> <p>22 Q. And this survey was performed in</p>	<p>1 Q. They averaged 56.6 percent of AWP for</p> <p>2 drugs without FUL prices, and -- roughly --</p> <p>3 apparently 12.7 percent of AWP for multisource</p> <p>4 drugs with FUL prices; is that correct?</p> <p>5 A. That's what it says.</p> <p>6 Q. Is that generally consistent with your</p> <p>7 understanding of the acquisition costs of</p> <p>8 multisource drugs around this time frame?</p> <p>9 A. I remember that they were considerably</p> <p>10 less than AWP-5 or even AWP-17 where we are now,</p> <p>11 but I don't remember the exact numbers.</p> <p>12 Q. Okay. And where this finding says "56.6</p> <p>13 percent of AWP," if we were to convey that in</p> <p>14 terms of AWP-5 percentage, would it be roughly</p> <p>15 equivalent to AWP -- 43.4 approximately percent?</p> <p>16 A. Something like that, if that's one</p> <p>17 hundred minus 56.6.</p> <p>18 Q. Okay. Do you have Exhibit Walker 8 in</p> <p>19 front of you?</p> <p>20 It's the document entitled "Department</p> <p>21 of Health Services Proposals to Reduce Medi-Cal</p> <p>22 Expenditures for Pharmaceutical Products" prepared</p>
Page 151	Page 153
<p>1 relation to Myers and Stauffer's recommendations</p> <p>2 in the prior exhibit regarding reducing</p> <p>3 reimbursement?</p> <p>4 A. It was done in -- keeping with the</p> <p>5 instructions from the Legislature. The -- SB 393</p> <p>6 said among other things that the DHS shall conduct</p> <p>7 a study of adequacy of Medi-Cal pharmacy</p> <p>8 reimbursement rates including the cost of</p> <p>9 providing prescription drugs and services.</p> <p>10 I would say that's why we did it.</p> <p>11 Q. Okay. And, if we look at page 4 of this</p> <p>12 document, it lists some of the significant</p> <p>13 findings of the study; correct?</p> <p>14 A. I believe so.</p> <p>15 Q. And it -- it appears that one of the</p> <p>16 significant findings of the study was that the</p> <p>17 acquisition cost of multisource drugs exhibited</p> <p>18 much greater variation but averaged 56.6 percent</p> <p>19 of the AWP?</p> <p>20 A. Where are you at?</p> <p>21 Q. The last finding.</p> <p>22 A. Oh, okay.</p>	<p>1 by Vic Walker on November 23rd, '99.</p> <p>2 A. Here it is. Yes.</p> <p>3 Q. If you turn to the back of that</p> <p>4 document, the first paragraph references an OIG</p> <p>5 report that estimated that AWP exceeded pharmacy</p> <p>6 invoice prices at -- by 41.4 percent for generic</p> <p>7 drugs; is that correct?</p> <p>8 A. That's what it says.</p> <p>9 Q. Now, that -- finding is generally</p> <p>10 consistent with the finding in this 2002 Myers and</p> <p>11 Stauffer report; correct?</p> <p>12 MR. FISHER: Objection as to form.</p> <p>13 THE WITNESS: It would appear to be. It</p> <p>14 would appear to me the numbers are fairly close.</p> <p>15 BY MR. MALONEY:</p> <p>16 Q. Okay. Now, I think we discussed earlier</p> <p>17 that the proposal in Exhibit Walker 8 in '99 was</p> <p>18 rejected by the Legislature; right?</p> <p>19 A. I believe so.</p> <p>20 Q. Do you know if the recommendations by</p> <p>21 Myers and Stauffer to reduce reimbursement was</p> <p>22 accepted in some form by the Legislature?</p>

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<p style="text-align: right;">Page 154</p> <p>1 MR. FISHER: Objection as to form.</p> <p>2 THE WITNESS: I -- I don't know if the</p> <p>3 Legislature accepted it in some form.</p> <p>4 You're probably going toward did we make</p> <p>5 a change based on this. Yes.</p> <p>6 BY MR. MALONEY:</p> <p>7 Q. Okay. And was that change to change</p> <p>8 reimbursement to AWP-10 percent?</p> <p>9 A. That was the first change that we made.</p> <p>10 Q. Was that in the year 2002?</p> <p>11 A. Thereabouts.</p> <p>12 Q. And was that change related to the</p> <p>13 findings in these Myers and Stauffer reports?</p> <p>14 A. The Myers and Stauffer report provided</p> <p>15 us some useful information in coming to a final</p> <p>16 number.</p> <p>17 Q. Do you think this finding in -- Walker</p> <p>18 Exhibit 14 that acquisition costs for multiple</p> <p>19 source drugs averaged 56.6 percent of AWP was some</p> <p>20 of the information that helped lead to the change</p> <p>21 in reimbursement?</p> <p>22 MR. FISHER: Objection as to form.</p>	<p style="text-align: right;">Page 156</p> <p>1 this exhibit.</p> <p>2 15?</p> <p>3 THE REPORTER: (Nodding head)</p> <p>4 MR. MALONEY: Mark that as Walker</p> <p>5 Exhibit 15.</p> <p>6 (Exhibit Walker 015 was marked for</p> <p>7 Identification.)</p> <p>8 THE WITNESS: Thank you.</p> <p>9 Oh, I remember that.</p> <p>10 Any particular parts you're going to</p> <p>11 look at?</p> <p>12 MR. MALONEY: Just the first page.</p> <p>13 THE WITNESS: Okay.</p> <p>14 Okay.</p> <p>15 BY MR. MALONEY:</p> <p>16 Q. Okay. Do you recognize this document?</p> <p>17 A. Yes. I've seen it before certainly.</p> <p>18 Q. And this document is entitled "Medi-Cal</p> <p>19 Drug Rebate/Dispute Resolution, Frequently Asked</p> <p>20 Questions;" correct?</p> <p>21 A. Uh-huh.</p> <p>22 Q. And the first question is "What is</p>
<p style="text-align: right;">Page 155</p> <p>1 THE WITNESS: The information in this</p> <p>2 report was useful in making that change -- making</p> <p>3 the final recommendation, I'm sure.</p> <p>4 MR. MALONEY: Okay.</p> <p>5 THE WITNESS: Although the final</p> <p>6 recommendation that went to the Legislature, I</p> <p>7 didn't hands-on do.</p> <p>8 Q. Okay. We can set that aside.</p> <p>9 I believe you -- mentioned that the</p> <p>10 current reimbursement is at AWP-17 percent?</p> <p>11 A. Yes.</p> <p>12 Q. And when was that change made?</p> <p>13 A. You know, I am -- I don't remember.</p> <p>14 2007, I think.</p> <p>15 I think it was about 2007.</p> <p>16 I'm sure you got some documents in there</p> <p>17 to give us some numbers.</p> <p>18 See, you've got to understand that, if I</p> <p>19 were sitting at my desk doing this, I would be</p> <p>20 looking up numbers and documents to get that</p> <p>21 information.</p> <p>22 MR. MALONEY: Why don't we just mark</p>	<p style="text-align: right;">Page 157</p> <p>1 California's reimbursement rate?" correct?</p> <p>2 A. Yes.</p> <p>3 Q. And this sets out the reimbursement</p> <p>4 rates from about 1989 to -- to the rate that</p> <p>5 became effective on September 1, 2004; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And this shows that -- on or after</p> <p>8 December 1st, 2002 Medi-Cal used AWP-10 percent as</p> <p>9 a basis for reimbursements?</p> <p>10 A. Yes.</p> <p>11 Q. And effective September 1st, 2004 Medi-</p> <p>12 Cal used AWP-17 percent --</p> <p>13 A. Yes.</p> <p>14 Q. -- as a basis for reimbursement.</p> <p>15 And it also lists selling price as a</p> <p>16 basis for reimbursement?</p> <p>17 A. Yes.</p> <p>18 Q. And it says that --</p> <p>19 A. And -- notice that it says "will be."</p> <p>20 Q. Right.</p> <p>21 It says "Selling price will be based on</p> <p>22 average sales price"?</p>

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<p style="text-align: right;">Page 158</p> <p>1 A. Yes.</p> <p>2 Q. Do you know if Medi-Cal currently use</p> <p>3 Average Sales Price as a basis for reimbursement?</p> <p>4 A. No.</p> <p>5 Q. No, you don't know, or, no, Medi-Cal</p> <p>6 does not?</p> <p>7 A. Medi-Cal does not use it.</p> <p>8 MR. MALONEY: Okay. Why don't we take</p> <p>9 another short break while I organize additional</p> <p>10 exhibits.</p> <p>11 VIDEOGRAPHER: We are going off video</p> <p>12 record at approximately 2:23.</p> <p>13 (Thereupon a recess was taken at</p> <p>14 2:23 p.m. and the deposition resumed at 2:37</p> <p>15 p.m.)</p> <p>16 VIDEOGRAPHER: We're back on the video</p> <p>17 record at approximately 2:37.</p> <p>18 BY MR. MALONEY:</p> <p>19 Q. Mr. Walker, you mentioned that Medi-Cal</p> <p>20 did -- does not use average sales price as a basis</p> <p>21 for reimbursement?</p> <p>22 A. That's true.</p>	<p style="text-align: right;">Page 160</p> <p>1 I want to say that it wasn't available</p> <p>2 to us. I think it's not available to us.</p> <p>3 Q. Did the Department look at another price</p> <p>4 to replace average sales price?</p> <p>5 A. We looked at a -- a new and improved way</p> <p>6 of doing MAICs, which didn't happen.</p> <p>7 We've talked about doing AMPs at one</p> <p>8 point, but we don't have the authority to do that</p> <p>9 at this point.</p> <p>10 Q. Okay. What is "AMP"?</p> <p>11 A. Average Manufacturer Price.</p> <p>12 Q. And what does AMP represent?</p> <p>13 A. It is -- I believe, the average of --</p> <p>14 average price that a pharmacist -- excuse me -- a</p> <p>15 manufacturer would sell the product out the door</p> <p>16 to a wholesaler.</p> <p>17 Q. And does that include discounts?</p> <p>18 A. It includes some discounts.</p> <p>19 Q. Okay. And does --</p> <p>20 A. I believe.</p> <p>21 Q. Does DHS use AMP for supplemental</p> <p>22 rebates?</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Is it using any other price other than</p> <p>2 average sales price as a basis for reimbursement?</p> <p>3 A. We're using -- as it says here, AWP-17,</p> <p>4 MAIC, FUL, or the provider charge.</p> <p>5 We pay the lower of those.</p> <p>6 Q. Okay. And the --</p> <p>7 A. Or, to be correct, we add on dispensing</p> <p>8 fee and pay at the lower of those.</p> <p>9 I have to include the dispensing fee</p> <p>10 because, you know, if the list price is \$10, and</p> <p>11 the FUL price is \$5, and the pharmacy charges us</p> <p>12 \$2, we'll happily pay them \$2.</p> <p>13 Q. Okay. And the reimbursement change that</p> <p>14 became effective September 1st, 2004 contemplated</p> <p>15 using average sales price; correct?</p> <p>16 A. Yes.</p> <p>17 Q. But it turned out that the program</p> <p>18 decided not to use average sales price?</p> <p>19 A. I'm not sure what the history was on</p> <p>20 that.</p> <p>21 I wasn't the primary person working on</p> <p>22 it.</p>	<p style="text-align: right;">Page 161</p> <p>1 A. Yes. And for -- yes.</p> <p>2 Q. And how long has DHS been using AMP for</p> <p>3 rebates?</p> <p>4 A. We've had AMPs from the manufacturers</p> <p>5 for several years now, but I don't know -- I don't</p> <p>6 remember the date that we started getting them.</p> <p>7 Q. When you joined Medi-Cal, was it using</p> <p>8 AMP?</p> <p>9 A. No. AMP didn't exist then.</p> <p>10 Q. Okay. Do you know when it came in to</p> <p>11 existence?</p> <p>12 A. It came in as an artifact of OBRA '90,</p> <p>13 so it had been about October 1990 that the law</p> <p>14 said that this shall be an AMP.</p> <p>15 Q. Okay. You said the program considered</p> <p>16 using AMP as a basis for reimbursement; correct?</p> <p>17 A. We've talked about it.</p> <p>18 Q. Would AMP --</p> <p>19 A. I couldn't say that the program</p> <p>20 considered it, but we've talked about it in our</p> <p>21 office.</p> <p>22 Q. Okay. Would you consider AMP to be a</p>

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<p style="text-align: right;">Page 162</p> <p>1 better estimate of acquisition cost?</p> <p>2 A. Better than what?</p> <p>3 Q. AWP?</p> <p>4 A. Probably.</p> <p>5 MR. MALONEY: Okay. All right.</p> <p>6 I'd like to mark this as exhibit -- 16?</p> <p>7 THE REPORTER: (Nodding head)</p> <p>8 (Exhibit Walker 016 was marked for</p> <p>9 Identification.)</p> <p>10 BY MR. MALONEY:</p> <p>11 Q. Please take a minute to review this</p> <p>12 exhibit and let me know when you're ready.</p> <p>13 A. It's been a while.</p> <p>14 Okay.</p> <p>15 Q. This document is -- appears to be an E-</p> <p>16 mail chain ending in September 4, 2001 in which</p> <p>17 you participated; correct?</p> <p>18 A. Yes.</p> <p>19 Q. And it appears that the messages on this</p> <p>20 chain were sent to various people -- people from</p> <p>21 various state Medicaid agencies; correct?</p> <p>22 A. In general, yes. This is an ADURS E-</p>	<p style="text-align: right;">Page 164</p> <p>1 2000, and so -- and I attended the first ADURS</p> <p>2 meeting that I attended shortly thereafter, you</p> <p>3 know, like in February, I think, and I signed up</p> <p>4 about -- about then.</p> <p>5 So it would have been about February</p> <p>6 2000.</p> <p>7 Q. And generally this E-mail discussion</p> <p>8 relates to the use of actual acquisition cost for</p> <p>9 reimbursement in Medicaid; --</p> <p>10 A. Yes.</p> <p>11 Q. -- correct?</p> <p>12 And on September 4th, you wrote a</p> <p>13 message to the list serve relating to that issue;</p> <p>14 right?</p> <p>15 A. I'm not sure it was September 4th.</p> <p>16 Ron Graham's reply is on September 4th.</p> <p>17 I am -- oh. I take that back.</p> <p>18 Yes, I did.</p> <p>19 Q. Okay. And --</p> <p>20 A. I was getting confused by the times, but</p> <p>21 I forgot that he's located two hours east of here.</p> <p>22 So --</p>
<p style="text-align: right;">Page 163</p> <p>1 mail chain.</p> <p>2 Q. And what is "ADURS"?</p> <p>3 A. American Drug Utilization Society.</p> <p>4 Excuse me.</p> <p>5 Drug Utilization Review Society.</p> <p>6 Q. Were you a member of ADURS?</p> <p>7 A. Yes.</p> <p>8 Q. This -- the subject of this E-mail chain</p> <p>9 is "Re: Prescription Drug Savings - Acquisition</p> <p>10 Costs."</p> <p>11 It appears that the discussion relates</p> <p>12 to -- started from the -- based on the executive</p> <p>13 summary of an OIG report dated August 10th, 2001;</p> <p>14 correct?</p> <p>15 A. So it would appear.</p> <p>16 Q. And did you -- often participate in E-</p> <p>17 mail discussions similar to this?</p> <p>18 A. From time-to-time.</p> <p>19 Q. When did you sign up for -- to receive</p> <p>20 E-mails similar to this from the ADURS</p> <p>21 organization?</p> <p>22 A. I became the DUR pharmacist in about</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. He works for Oklahoma; right?</p> <p>2 A. Yeah. Yeah.</p> <p>3 So he's -- so that would have been --</p> <p>4 different time for me, and that's why I'm getting</p> <p>5 confused.</p> <p>6 Q. Okay. And in your E-mail you state "I</p> <p>7 think paying at actual acquisition cost, ACC,</p> <p>8 would be a very good thing. There are two serious</p> <p>9 problems with paying at AAC though."</p> <p>10 And in the first problem you generally</p> <p>11 note that it's difficult to get AAC for use in</p> <p>12 reimbursement; correct?</p> <p>13 A. Yes.</p> <p>14 Q. And in the second problem you note that</p> <p>15 California hasn't updated its dispensing fee since</p> <p>16 the late eighties; is that accurate?</p> <p>17 A. Pretty sure.</p> <p>18 Might have been the mid-eighties, but at</p> <p>19 the time that was my best guess.</p> <p>20 Q. Okay. And you note that pharmacists'</p> <p>21 costs have risen quite a bit during this time --</p> <p>22 during that time?</p>

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<p style="text-align: right;">Page 166</p> <p>1 A. Yes.</p> <p>2 Q. And you ask the question, "How is it</p> <p>3 that the pharmacists can mostly stay in business</p> <p>4 with no adjustment for inflation?"</p> <p>5 And your -- response to that question is</p> <p>6 that pharmacists have -- been able to stay in</p> <p>7 business because of the spread between AWP-X</p> <p>8 percent and AAC; is that accurate?</p> <p>9 A. That's an accurate characterization --</p> <p>10 characterization of what this says.</p> <p>11 Q. And was that your understanding at the</p> <p>12 time you wrote this message?</p> <p>13 A. Yes.</p> <p>14 Q. And in the last sentence of this second</p> <p>15 problem you discuss here, you state "If we change</p> <p>16 from the current reimbursement mechanism to one</p> <p>17 that's AAC-based, we're going to have to do some</p> <p>18 serious revamping of our dispensing fees or we'll</p> <p>19 have problems with patient access."</p> <p>20 Did I read that correctly?</p> <p>21 A. Well, if you're reading the last</p> <p>22 sentence, it says "one man's opinion."</p>	<p style="text-align: right;">Page 168</p> <p>1 Exhibit 18.</p> <p>2 THE WITNESS: Okay.</p> <p>3 MR. FISHER: Thank you.</p> <p>4 BY MR. MALONEY:</p> <p>5 Q. Just take a minute to look at this</p> <p>6 document. I'm going to focus on -- pages 4 and 5</p> <p>7 -- actually 4, 5 and 6.</p> <p>8 A. Okay.</p> <p>9 Q. Do you recognize this document?</p> <p>10 A. I do not. I don't recall seeing it.</p> <p>11 Q. This is an Office of Inspector General</p> <p>12 report dated May 1996 entitled "Review of Pharmacy</p> <p>13 Acquisition Costs for Drugs Reimbursed Under the</p> <p>14 Medicaid Drug Prescription Program of the</p> <p>15 California Department of Health Services;"</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Is this the type of document that you</p> <p>19 would have reviewed in your position as a pharma -</p> <p>20 - pharmacy -- Pharmaceutical Consultant 2 at</p> <p>21 Medicaid if it had come across your desk?</p> <p>22 A. If it had come across my desk, I</p>
<p style="text-align: right;">Page 167</p> <p>1 Q. Well, the second to last sentence, I</p> <p>2 guess.</p> <p>3 A. Yes, that is -- that's correct, second</p> <p>4 to the last sentence.</p> <p>5 Q. And that was your understanding at the</p> <p>6 time you wrote this message; correct?</p> <p>7 A. Yes, that was my belief.</p> <p>8 Q. Okay. And your -- beliefs here were</p> <p>9 based on your experience working in the California</p> <p>10 Medicaid program; correct?</p> <p>11 A. Yes.</p> <p>12 Q. And they were also based on your</p> <p>13 experience as a Registered Pharmacist?</p> <p>14 A. Yes. Yes.</p> <p>15 Although for the past -- let's see.</p> <p>16 I was -- you know, I'd been there for</p> <p>17 over 10 years, so at that time I had -- I had been</p> <p>18 inside Medi-Cal for a long time at that point.</p> <p>19 MR. MALONEY: Okay. I think we can set</p> <p>20 that aside.</p> <p>21 I'm going to mark -- well, I'm going to</p> <p>22 show you what's been previously marked as Gorospe</p>	<p style="text-align: right;">Page 169</p> <p>1 typically would have looked at it, and it may</p> <p>2 have.</p> <p>3 Q. Okay.</p> <p>4 A. I just don't remember it.</p> <p>5 Q. Okay. In any event, this OIG relates</p> <p>6 specifically to the California Medicaid program;</p> <p>7 correct?</p> <p>8 A. That's my understanding -- although when</p> <p>9 I read the summary real quick it did talk about</p> <p>10 other -- they pulled samples from other states as</p> <p>11 well, but this particular report's just about</p> <p>12 California, I believe, --</p> <p>13 Q. Okay.</p> <p>14 A. -- based on the title.</p> <p>15 Q. If we turn to page 1 -- I'll give you</p> <p>16 additional time to review that page.</p> <p>17 I should say I'm mostly interested in</p> <p>18 the first sentence.</p> <p>19 A. Oh. Then go ahead.</p> <p>20 Q. The first sentence here states "At the</p> <p>21 request of HCFA, OIL, Office of Audit Services,</p> <p>22 OAS, conducted a review of pharmacy acquisition</p>

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<p>1 costs for drugs reimbursed under the Medicaid 2 prescription drug program of the California 3 Department of Health Services, state agency." 4 Did I read that correctly? 5 A. I think so. 6 Q. So it appears that this report relates 7 specifically to the California Department of 8 Health Services? 9 A. Yes. Yes. 10 Q. Okay. And, if we could turn to page 4, 11 please. 12 Page 4 contains the beginning of section 13 -- a section entitled "Findings and 14 Recommendations;" correct? 15 A. Yes. 16 Q. And this section starts out with 17 findings and recommendations relating to brand 18 name drugs and generic drugs on page 5 as well; 19 correct? 20 A. Yes. 21 Q. And with respect to brand name drugs, 22 the OIG states "We estimate that AWP exceeded</p>	<p>1 I did know that AWP was not a hundred percent 2 accurate estimating -- estimate for EAC, and it 3 tended to be more incorrect for generic drugs -- 4 Q. Okay. 5 A. -- than for single source. 6 Q. If I could refer you back to Exhibit 7 Walker 8 again. 8 A. Okay. 9 Q. It's this document. 10 A. I'm going to have to file these in 11 order. Yes. 12 Q. I believe that's it. 13 A. Okay. 14 Q. Once again, if you could look at the 15 second page of this exhibit, the first paragraph. 16 This paragraph states that the -- that 17 "An OIG report found that the overall estimate 18 that -- to the extent that AWP exceeded pharmacy 19 invoice prices was 17.5 percent for brand named 20 drugs, 41.4 percent for generic drugs; right? 21 A. That's what it reads. 22 Q. Do you think that Gorospe Exhibit 18</p>
Page 171	Page 173
<p>1 invoice prices for brand name drugs by 17.5 2 percent." 3 Did I read that correctly? 4 A. Yes. 5 Q. And was that consistent with your 6 understanding of AWP with respect to brand name 7 drugs in 1996? 8 A. I don't recall the number back then. 9 Q. Okay. 10 A. I knew it was -- you know, AW -- the 11 true price the pharmacy paid was something less 12 than AWP, but what the number was I truly don't 13 remember at this point. 14 Q. Okay. And with respect to generic 15 drugs, beginning on page 5, the OIG states "We 16 estimate that AWP exceeded invoice prices for 17 generic drugs by 41.4 percent." 18 Did I read that correctly? 19 A. Yes. 20 Q. And, again, was that generally 21 consistent with your understanding of AWP in 1996? 22 A. I -- I can't swear to 41.4 percent, but</p>	<p>1 could have been the source for these numbers in 2 Walker Exhibit 8? 3 MR. FISHER: Object as to form. 4 THE WITNESS: There's certainly a good 5 chance that they came from there. 6 BY MR. MALONEY: 7 Q. Okay. And exhibit -- well, you prepared 8 Exhibit Walker 8; correct? 9 A. I believe so, yes. 10 Q. Is it fair to say that when you prepared 11 this you were aware that AWP exceeded pharmacy 12 invoice prices by 17.5 percent for brand name 13 drugs and by 41.4 percent for generic drugs? 14 A. At the time that I wrote this I got 15 those numbers. 16 I don't remember -- I truly don't 17 remember seeing this document, so I can't 18 guarantee that that number came from my reading it 19 here or from somebody else telling me. 20 Q. Okay. In any event, you felt confident 21 in the -- confident in those numbers to put them 22 in this document; correct?</p>

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<p style="text-align: right;">Page 174</p> <p>1 A. Yes. I was quoting from a particular --</p> <p>2 this OIG report.</p> <p>3 Q. Okay.</p> <p>4 A. So -- you know, I had to depend on them</p> <p>5 to get it right.</p> <p>6 Q. Okay. But you generally trusted OIG as</p> <p>7 a source of information relating to prescription</p> <p>8 drug reimbursement and actual acquisition costs?</p> <p>9 MR. FISHER: Objection as to form.</p> <p>10 THE WITNESS: I never looked at their --</p> <p>11 their -- how they did their studies or whatever.</p> <p>12 I didn't have a reason to disbelieve them, let's</p> <p>13 put it that way.</p> <p>14 BY MR. MALONEY:</p> <p>15 Q. Okay. We can set -- set aside these</p> <p>16 exhibits.</p> <p>17 I'm going to show you what's been</p> <p>18 previously marked as Gorospe Exhibit 19.</p> <p>19 Please take a minute to review this</p> <p>20 document.</p> <p>21 I will plan to question -- ask questions</p> <p>22 only relating to the summary.</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. Okay. If we look at the summary, is it</p> <p>2 fair to say that this report -- was the result of</p> <p>3 a survey of the actual acquisition cost of brand</p> <p>4 name drugs throughout the country?</p> <p>5 A. Well, they said that they didn't -- they</p> <p>6 excluded a few states, and -- and then they took a</p> <p>7 random sample of 11 of the other states, so I</p> <p>8 couldn't say it's across the country.</p> <p>9 Q. Okay. Was California one of the states</p> <p>10 in which --</p> <p>11 A. Yes.</p> <p>12 Q. -- the study was performed?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And, if we look at the second</p> <p>15 sentence in the second to last paragraph --</p> <p>16 A. On this page?</p> <p>17 Q. Yes. Under the "Summary."</p> <p>18 The OIG states "We estimated that actual</p> <p>19 acquisition cost was a national average of 18.3</p> <p>20 percent below AWP."</p> <p>21 A. Oh, I see.</p> <p>22 Q. Did I read that correctly?</p>
<p style="text-align: right;">Page 175</p> <p>1 A. Okay. Okay.</p> <p>2 Q. Do you recognize this report?</p> <p>3 A. I do not.</p> <p>4 Q. This is another Office of General</p> <p>5 Inspector report; correct?</p> <p>6 A. It appears to be. Inspector General.</p> <p>7 Q. And it's entitled "Medicaid Pharmacy -</p> <p>8 Actual Acquisition Cost of Prescription Drug</p> <p>9 Products for Brand Name Drugs" dated April 1997;</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And this is the type of report that you</p> <p>13 would have reviewed at Medi-Cal if it had come</p> <p>14 across your desk?</p> <p>15 A. (Nodding head)</p> <p>16 Q. In fact, you did review other reports</p> <p>17 relating from the OIG -- on certain occasions</p> <p>18 during your time at --</p> <p>19 A. I'm sure that at some time in my 20</p> <p>20 years here I've looked at OIG reports.</p> <p>21 Q. Okay.</p> <p>22 A. I don't recall any specific ones.</p>	<p style="text-align: right;">Page 177</p> <p>1 A. Yes.</p> <p>2 Q. And that's generally in line with the</p> <p>3 findings in the California specific report;</p> <p>4 correct?</p> <p>5 A. In the ballpark, and it says 17.5 in the</p> <p>6 other one, so it's pretty close.</p> <p>7 Q. Okay. All right. We can set that</p> <p>8 aside.</p> <p>9 I'll show you what's been previously</p> <p>10 marked as Gorospe Exhibit 20.</p> <p>11 Once again, if you could just take a</p> <p>12 look at this document, let me know when you're</p> <p>13 ready.</p> <p>14 I'll focus my questions on the summary</p> <p>15 again.</p> <p>16 A. I see.</p> <p>17 Okay.</p> <p>18 Q. Okay. Do you recognize this document?</p> <p>19 A. I do not.</p> <p>20 Q. This is another OIG report.</p> <p>21 It's dated August 1997, and it's</p> <p>22 entitled "Medicaid Pharmacy - Actual Acquisition</p>

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<p style="text-align: right;">Page 178</p> <p>1 Cost of Generic Prescription Drug Products;"</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. And, when I look at this summary, it</p> <p>5 appears that this report is related to the survey</p> <p>6 that was the basis of the brand report that we</p> <p>7 just looked at; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And, once again, California was one of</p> <p>10 the states that was involved in this survey;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And if we look at the third paragraph,</p> <p>14 the OIG states "We estimated that, on average,</p> <p>15 actual acquisition cost of generic drugs was 42.5</p> <p>16 percent below AWP."</p> <p>17 Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. And that's generally in the ballpark of</p> <p>20 the California specific report that we looked at</p> <p>21 earlier; correct?</p> <p>22 A. Yes. It was 44.3 or something like</p>	<p style="text-align: right;">Page 180</p> <p>1 "Medicaid Pharmacy - Actual Acquisition Cost of</p> <p>2 Brand Name Prescription Drug Products" dated</p> <p>3 August 2001; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And this report describes another survey</p> <p>6 of actual acquisition costs?</p> <p>7 A. Yes -- different from the 1997 one, I</p> <p>8 think.</p> <p>9 Q. Right.</p> <p>10 And it made findings as to the actual</p> <p>11 acquisition cost of brand name drugs under the</p> <p>12 executive summary; correct?</p> <p>13 A. Yes.</p> <p>14 Q. And in the last paragraph the OIG states</p> <p>15 "We estimated that the actual acquisition cost for</p> <p>16 brand name drugs was a national average of 21.84</p> <p>17 percent below AWP."</p> <p>18 Did I read that correctly?</p> <p>19 A. Yes.</p> <p>20 Q. And generally is that in the ballpark of</p> <p>21 the findings of the prior reports?</p> <p>22 A. No. That's a bit higher.</p>
<p style="text-align: right;">Page 179</p> <p>1 that.</p> <p>2 Just to be sure on that. 41.1 -- 41.4.</p> <p>3 Q. Okay.</p> <p>4 A. Yeah. So it's in the ballpark.</p> <p>5 Q. Okay. That's generally in the ballpark</p> <p>6 of the -- difference between AWP and actual</p> <p>7 acquisition cost that was included in Walker</p> <p>8 Exhibit 8; correct?</p> <p>9 A. I believe so.</p> <p>10 Q. Okay. Let's set that aside.</p> <p>11 I'll show you what's been previously</p> <p>12 marked as Gorospe Exhibit 27.</p> <p>13 Sorry.</p> <p>14 Once again, please take a quick look at</p> <p>15 that document. I'll focus my questions on the</p> <p>16 Executive Summary, which was the third -- page of</p> <p>17 the exhibit.</p> <p>18 A. Okay.</p> <p>19 Q. Do you recognize the OIG report?</p> <p>20 A. I do not -- do not recognize it.</p> <p>21 Q. Okay. This is --</p> <p>22 Okay. This is a report entitled</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. Okay. And the OIG notes in the next</p> <p>2 sentence that -- the difference between its</p> <p>3 current findings in this report and the findings</p> <p>4 in its 1994 pricing survey; correct?</p> <p>5 A. Yeah, it does.</p> <p>6 Q. Okay. You can set that aside.</p> <p>7 Only a few more of these.</p> <p>8 A. Okay.</p> <p>9 Q. I'll show you what's been marked as</p> <p>10 Gorospe Exhibit 28.</p> <p>11 Once again, please take a look at the</p> <p>12 document and let me know when you're ready.</p> <p>13 I'll focus my questions on the Executive</p> <p>14 Summary.</p> <p>15 A. Okay.</p> <p>16 Q. Do you recognize this document?</p> <p>17 A. I do not.</p> <p>18 Q. This is another OIG report similar to</p> <p>19 the one we just looked at except focused on the</p> <p>20 actual acquisition cost of generic drugs; correct?</p> <p>21 A. Yes.</p> <p>22 Q. And it's dated March 2002?</p>

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<p style="text-align: right;">Page 182</p> <p>1 A. Yes.</p> <p>2 Q. And in the Executive Summary in the</p> <p>3 second to last paragraph the OIG states "We</p> <p>4 estimated that the actual generic drugs</p> <p>5 acquisition cost was a national average of 65.93</p> <p>6 percent below AWP;" correct?</p> <p>7 A. That's what it says.</p> <p>8 Q. Is this consistent with your</p> <p>9 understanding of actual acquisition costs of</p> <p>10 generic drugs in the time frame of 2002?</p> <p>11 A. I didn't know what the number was -- or</p> <p>12 I don't recall what the number was.</p> <p>13 Q. But you were generally aware that --</p> <p>14 A. I knew that generic drugs -- AWP was not</p> <p>15 a good measure of the actual acquisition cost of</p> <p>16 drugs, and it was particularly more wrong for</p> <p>17 generic drugs, but what the number was I truly</p> <p>18 don't remember.</p> <p>19 MR. MALONEY: Okay. You can set that</p> <p>20 aside.</p> <p>21 Okay. I'd like to mark this as Walker</p> <p>22 Exhibit 17.</p>	<p style="text-align: right;">Page 184</p> <p>1 summary of the report; correct?</p> <p>2 A. Yes, and overview.</p> <p>3 Q. When OIG reports were circulated in your</p> <p>4 department, were they commonly circulated by E-</p> <p>5 mail?</p> <p>6 A. If -- if a report came out in more</p> <p>7 recent years -- and mind you, when they first got</p> <p>8 here the E-mail was not nearly as common -- but</p> <p>9 usually if -- if a report were to be circulated</p> <p>10 nowadays, I'd just get an E-mail about it.</p> <p>11 Q. Okay. And how were they circulated</p> <p>12 before E-mail?</p> <p>13 A. Paper. Paper -- if they -- if they were</p> <p>14 circulated.</p> <p>15 Q. Okay. And I'll show you what's been</p> <p>16 previously marked as Gorospe Exhibit 22.</p> <p>17 Just take a quick minute to look at this</p> <p>18 document.</p> <p>19 Once again, I'll focus on the Executive</p> <p>20 Summary.</p> <p>21 A. This says September, but it doesn't give</p> <p>22 a year.</p>
<p style="text-align: right;">Page 183</p> <p>1 (Exhibit Walker 017 was marked for</p> <p>2 Identification.)</p> <p>3 THE WITNESS: Thank you.</p> <p>4 BY MR. MALONEY:</p> <p>5 Q. Please take a minute to look at this</p> <p>6 document and let me know when you're ready.</p> <p>7 A. Okay.</p> <p>8 Q. Do you recognize this E-mail?</p> <p>9 A. I don't remember seeing it.</p> <p>10 Q. Your --</p> <p>11 A. I see that I'm -- I see that I'm a</p> <p>12 recipient.</p> <p>13 I may very well have received it, but I</p> <p>14 -- I don't recall seeing it.</p> <p>15 Q. Okay. The subject of this E-mail is</p> <p>16 "Medicaid Pharmacy - Additional Analyses of the</p> <p>17 Actual Acquisition Cost of Prescription Drug</p> <p>18 Products," and it lists -- what appears to be a</p> <p>19 report number; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And the body of the E-mail is -- it</p> <p>22 contains a link to an OIG report and a brief</p>	<p style="text-align: right;">Page 185</p> <p>1 Do we happen to have a clue as to what</p> <p>2 year it was?</p> <p>3 Q. I believe Appendix 12.</p> <p>4 A. Okay. So around about 2002.</p> <p>5 What area do you want to focus on?</p> <p>6 Q. The Executive Summary.</p> <p>7 A. Okay.</p> <p>8 Q. Do you recognize this report?</p> <p>9 A. I do not.</p> <p>10 Q. Okay. This appears to be the report</p> <p>11 that was linked to an E-mail that we looked at in</p> <p>12 Walker Exhibit 17; correct?</p> <p>13 A. Likely so.</p> <p>14 Actually, yes, because the numbers</p> <p>15 match.</p> <p>16 Q. Okay. And this report appears to</p> <p>17 provide additional analyses of the survey results</p> <p>18 of the two previous reports we looked at relating</p> <p>19 to brand and generic drugs; correct?</p> <p>20 A. That's what it appears to do.</p> <p>21 Q. And on page -- the second page of the</p> <p>22 Executive Summary the OIG lists its findings of</p>

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<p style="text-align: right;">Page 186</p> <p>1 its -- or the results of its additional analyses; 2 correct? 3 A. Yes. 4 Q. And the OIG found that for single source 5 -- single source innovator drugs the actual 6 acquisition cost was approximately 17.2 percent 7 below AWP; correct? 8 A. Yes. 9 Q. And for multiple source drugs without 10 FULs the OIG found that the actual acquisition 11 cost was approximately 44.2 percent below AWP; 12 correct? 13 A. Yes. 14 Q. And for multiple source drugs with FULs 15 the OIG found that pharmacies purchased drugs at 16 approximately 72.1 percent below AWP; correct? 17 A. Yes. 18 Q. And the -- if we look at the E-mail in 19 Walker Exhibit 17, the same findings are listed in 20 the summary of this report in the E-mail; correct? 21 A. 17.2, 27.2, 44.2, 72.1. 22 That appears to be.</p>	<p style="text-align: right;">Page 188</p> <p>1 A. Okay. 2 Q. Do you recognize this presentation? 3 A. Yes. 4 Q. And you created this presentation; 5 correct? 6 A. Yes. 7 Q. And do you recall approximately when you 8 created this presentation? 9 A. I didn't put a date on this; did I? 10 Sometime this decade. A few years ago. 11 Q. Okay. 12 A. But I honestly don't remember when it 13 was. 14 Q. Do you think it was more than four years 15 ago? 16 A. I was invited to speak at a -- somewhere 17 in the neighborhood of four years -- four or more 18 probably. 19 Q. Okay. 20 A. If I look at the -- the date on the file 21 that this came from, I could tell you a little 22 more definitively.</p>
<p style="text-align: right;">Page 187</p> <p>1 Q. Okay. And these findings were 2 circulated to the DHS personnel listed on the "to" 3 field of this E-mail; correct? 4 A. Yes. 5 Q. Okay. 6 A. Excuse me. I'm yawning on the camera. 7 That's not courteous. 8 Sorry, viewers. 9 MR. MALONEY: Okay. I'll mark this as 10 Exhibit Walker 18. 11 (Exhibit Walker 018 was marked for 12 Identification.) 13 THE WITNESS: Thank you. 14 BY MR. MALONEY: 15 Q. Take a minute to look at this document 16 and let me know when you're ready. 17 A. Are you going to focus on any particular 18 part? 19 Should have numbered the slides. 20 Q. I'm going to look at the -- probably 21 focus mostly on the slide that has a Bates number 22 in the lower righthand corner ending in 081.</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. Okay. All right. We'll turn to the 2 slide ending -- well, that's -- has a Bates number 3 ending in 081. 4 A. Okay. 5 Q. This slide is entitled "Accuracy of 6 payment;" correct? 7 A. Yes. 8 Q. And it lists AWP, AWP-10 percent, new 9 maximum allowable ingredient costs, and wholesale 10 selling price? 11 A. This must have been before -- this must 12 have been longer than -- than just four years ago, 13 because this was done during a time when we were 14 paying at AWP-10, and we stopped doing that in 15 2004. 16 Q. Okay. 17 A. So this must be before that. 18 Q. And California switched to AWP-10 in 19 2002; correct? 20 A. Yeah. 21 So it would have been somewhere in that 22 range, 2002/2003 probably.</p>

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<p style="text-align: right;">Page 190</p> <p>1 Q. Okay. And under "AWP" it states "Ain't 2 What's Paid"? 3 A. That's right. 4 Q. And was that your understanding of AWP 5 at the time you created this presentation? 6 A. I've heard it called that by various 7 people, and it's -- some people would argue it's a 8 good -- it's a good description. 9 Q. Okay. And when did you first hear AWP 10 described as "Ain't What's Paid"? 11 A. Sometime in the late eighties or early 12 nineties probably -- although when I first heard 13 it it was not in reference to a drug. It was in 14 reference to diapers. 15 Q. Okay. When did you first hear "Ain't 16 What's Paid" with respect to pharmaceutical 17 pricing? 18 A. In that ballpark, probably in the early 19 nineties. 20 Q. Okay. And who did you give this 21 presentation to? 22 A. As I recall, this was to a -- I think it</p>	<p style="text-align: right;">Page 192</p> <p>1 A. Oh, I'm sure it was more. 2 Q. Do you recall whether you were first 3 instructed more than eight years ago? 4 A. I want to -- I recall some issue about 5 this when we moved from 7th and P Street to our 6 current quarters, and we had to box up all our 7 files, and I vaguely recall that we -- it might 8 not have been in connection with this lawsuit but 9 a different one that said we had to be sure not to 10 throw important documents. 11 Q. Okay. 12 A. And then I had a conversation after we 13 moved here with Jane Lamborn, I think, and it was 14 -- I don't remember the dates, but it would have 15 been on or after 2003, because we moved over here 16 then. 17 Q. And you believe that the -- issue 18 regarding preservation of documents before that 19 discussion was not related to this case? 20 A. I don't think that it -- this particular 21 set of companies was suing us about that 22 particular issue, so it -- might have been</p>
<p style="text-align: right;">Page 191</p> <p>1 was a -- a group purchasing organization, PCN, 2 from Pharmaceutical Network, and I was invited to 3 speak at this presentation. 4 Q. Okay. 5 A. I should have remembered to put dates on 6 things. I usually do. 7 MR. MALONEY: Okay. I think we can set 8 that aside for now. 9 THE WITNESS: Okay. 10 BY MR. MALONEY: 11 Q. Were you -- were you ever instructed to 12 preserve documents in connection with this case? 13 A. Yes. 14 Q. Do you recall when you were first 15 instructed to preserve documents? 16 A. I don't remember the exact date or time, 17 but if you look at how big my computer files are, 18 I should tell you, I don't throw things away very 19 much. 20 Q. Okay. Do you recall generally whether 21 you were first instructed more than five years ago 22 or less than five years ago?</p>	<p style="text-align: right;">Page 193</p> <p>1 something else. 2 Q. Okay. 3 A. It's a vague recollection. 4 Q. And you mentioned a name. 5 Was that Jane Lamborn? 6 A. Yes. She's one of the attorneys who was 7 originally on this case. 8 Q. Okay. And you -- I believe you 9 testified it was on or around 2003 -- in or around 10 2003? 11 A. Well, no, that we moved to our current 12 building. 13 Q. Okay. 14 A. So it would have had to have been after 15 that. 16 Q. After that? 17 A. Yeah. 18 Q. Okay. 19 A. Because I remember meeting in one of the 20 rooms there. So -- 21 Q. Okay. What did you do to -- 22 Well, were you asked to gather</p>

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<p>1 documents?</p> <p>2 A. Yes.</p> <p>3 Q. And what did you do to gather documents?</p> <p>4 A. I don't keep very many documents on</p> <p>5 paper, but I went through the files that I had and</p> <p>6 tried to pull out the documents that fit the</p> <p>7 criteria.</p> <p>8 Q. And -- when you no longer need a paper</p> <p>9 document, what do you do with it?</p> <p>10 A. Typically put it in the recycle, or</p> <p>11 shred it if it's confidential.</p> <p>12 If it's something I'm supposed to</p> <p>13 preserve, then I tuck it away.</p> <p>14 Q. Okay. And I believe you testified that</p> <p>15 you don't keep many paper documents.</p> <p>16 Was that --</p> <p>17 A. No, I don't keep a lot. I -- most of</p> <p>18 the -- you know, all these gobs of E-mails and</p> <p>19 things that you've seen probably came off of the</p> <p>20 computer files that I have of them, you know.</p> <p>21 But those -- serve very nicely.</p> <p>22 Q. Okay. And what about older documents</p>	<p>1 told or got an E-mail, and I was not the only</p> <p>2 person.</p> <p>3 So others were told, but I was not told</p> <p>4 to --</p> <p>5 Q. Okay.</p> <p>6 A. -- tell other people.</p> <p>7 Q. And the conversation you had with Jane</p> <p>8 Lamborn after 2003, do you recall if she -- if</p> <p>9 other DHS personnel were present at that</p> <p>10 conversation and also were instructed to preserve</p> <p>11 documents?</p> <p>12 A. This is -- probably comes under</p> <p>13 attorney/client privilege; doesn't it?</p> <p>14 MR. FISHER: Not if -- just the identity</p> <p>15 of who else was there.</p> <p>16 THE WITNESS: As I recall, it was just</p> <p>17 me and one other attorney.</p> <p>18 MR. FISHER: But thank you.</p> <p>19 THE WITNESS: Jane is an attorney.</p> <p>20 BY MR. MALONEY:</p> <p>21 Q. After this conversation with Jane did</p> <p>22 you speak with anyone in the IT Department about</p>
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<p>1 that came in to existence before E-mail?</p> <p>2 A. I actually managed to preserve those,</p> <p>3 too.</p> <p>4 Many of them came in under the old Profs</p> <p>5 E-mail system, and you got copies of those.</p> <p>6 Q. Okay.</p> <p>7 A. You know, I preserved those in files.</p> <p>8 Q. Did you --</p> <p>9 A. Keep in mind that a lot of what I was</p> <p>10 doing during this period of time had nothing to do</p> <p>11 with pricing things or whatever.</p> <p>12 I was designing claims processing</p> <p>13 systems over at EDS, and on occasion I would be</p> <p>14 called in to do something because I'm good with</p> <p>15 spread sheets.</p> <p>16 Q. Okay. Were you instructed to tell</p> <p>17 others to collect and preserve documents in</p> <p>18 relation to this litigation?</p> <p>19 A. I don't remember that I was told to tell</p> <p>20 others.</p> <p>21 I was told to do that, and others -- you</p> <p>22 know, as -- I was in the room when others were</p>	<p>1 collecting your electronic files?</p> <p>2 A. I talked to people that I believe</p> <p>3 they're under contract with the Department, and</p> <p>4 you guys are -- somebody, IT kinds of people, to</p> <p>5 collect those -- those documents, and help them to</p> <p>6 know which file extensions to be looking at and</p> <p>7 where I kept my files and things like that.</p> <p>8 Q. Did you talk to anybody from the IT</p> <p>9 Department or these IT contractors that you</p> <p>10 mentioned about collecting the electronic</p> <p>11 documents held by other DHS staff members?</p> <p>12 A. Yes. I talked about -- just -- just</p> <p>13 which -- as I recall, the only conversation I</p> <p>14 recall was a conversation on which file extensions</p> <p>15 to be looking at.</p> <p>16 You want to look at doc files, .xrs</p> <p>17 files for Excel files, and Dbase Files, and things</p> <p>18 like that to -- to assist them.</p> <p>19 Q. Do you recall the general time frame of</p> <p>20 this conversation with the IT people?</p> <p>21 A. I want to say in the last year or so --</p> <p>22 maybe last two years.</p>

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<p style="text-align: right;">Page 198</p> <p>1 It wasn't this year. It was -- a year 2 or so ago. 3 Q. Okay. And that was the first 4 conversation you had with the IT people about the 5 collection and preservation of documents? 6 A. Well, I remember that there was some con 7 -- we've had labels stuck on our computers for 8 quite some time now that say, you know, "Judicial 9 hold. Do not delete any documents," something 10 like that. 11 So those -- we've had those computers 12 since 2005, so -- and the stickers were stuck on 13 some time after that, maybe a year or so 14 afterwards. 15 Q. Okay. After your conversation with Jane 16 Lamborn just after 2003, where did you search to 17 collect your own documents? 18 A. The places where I keep documents. 19 I have some file drawers and things like 20 that. 21 Q. Okay. And you also searched your 22 computer files at the time or was -- did you</p>	<p style="text-align: right;">Page 200</p> <p>1 accurate? 2 A. 2005? 3 Where are we going? 4 Q. Correct me if I'm wrong, but I believe 5 you testified there was some sort of a meeting in 6 2005, and then afterwards stickers were applied to 7 computers? 8 A. No, no, not that there was a meeting. 9 We bought those new computers in 2005. 10 Q. Okay. 11 A. And we still have them, and the stickers 12 got applied, I want to say, several years after 13 that -- a couple years at least. 14 Q. Okay. So after the Jane Lamborn 15 conversation you don't remember a specific 16 conversation or a meeting relating to the 17 preservation and collection of documents relating 18 to this case? 19 A. I really don't. 20 Q. Did Jane Lamborn ever follow up with you 21 about the collection or preservation of documents? 22 A. She or the -- you know, at some point</p>
<p style="text-align: right;">Page 199</p> <p>1 search your computer files later? 2 A. Yeah, I did. 3 I looked for a few key phrases like 4 "spread" and things like that, but -- for the most 5 part we just gave you everything wholesale, I 6 think. 7 Q. Okay. And when was the next 8 conversation you had with anyone about the 9 collection and preservation of documents after the 10 conversation with Jane Lamborn? 11 A. Gee, I don't know. 12 We've had -- it will be brought up in a 13 meeting or something. They'll say, "By the way, 14 be sure that you preserve documents" or something 15 like that. 16 Q. Okay. 17 A. I don't recall any specific 18 conversations on the subject. I was told to do 19 it, so I did it. 20 Q. Okay. And you said, I believe, that you 21 recalled another meeting or conversation in 2005 22 relating to the preservation of documents; is that</p>	<p style="text-align: right;">Page 201</p> <p>1 she stopped being the -- the attorney that was 2 involved with this and more of it went to Janet 3 Alexander, and Janet has talked to me at one time 4 or another, but I don't really recall any specific 5 meetings where we sat down and said "The subject 6 of this meeting is preservation of documents." 7 Q. Okay. 8 A. Yeah. 9 Q. Do you recall -- sorry. 10 A. That's -- that's -- 11 Q. Okay. Do you recall receiving any E- 12 mails or memos relating to the collection and 13 preservation of documents? 14 A. I think I probably did. 15 I think I've seen some -- something 16 saying be sure to do that. 17 We did have some meetings with -- 18 Katharine Arons, who headed up an effort to go 19 through and redact a bunch of documents. 20 I don't know if that would fit in to 21 what you're asking. 22 Q. Okay. Was that in relation to this</p>

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<p style="text-align: right;">Page 202</p> <p>1 case?</p> <p>2 A. I believe so.</p> <p>3 Q. Okay. And I'm sorry. I don't know if I</p> <p>4 got your answer.</p> <p>5 Did you recall receiving memos or E-</p> <p>6 mails regarding the collection and preservation of</p> <p>7 documents?</p> <p>8 A. We've got them from time-to-time, I</p> <p>9 think.</p> <p>10 Q. And do you recall receiving any before</p> <p>11 the conversation with Jane Lamborn?</p> <p>12 A. I do not.</p> <p>13 Q. What's the earliest memo or E-mail</p> <p>14 regarding collection and preservation of documents</p> <p>15 that you remember receiving?</p> <p>16 A. I don't remember receiving any</p> <p>17 particular specific one, and certainly not any</p> <p>18 dates.</p> <p>19 Q. Okay. Okay.</p> <p>20 A. It wasn't a grand moment in my life.</p> <p>21 Q. Okay. When you began collecting</p> <p>22 documents after your conversation with Jane</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. Okay.</p> <p>2 A. I preserved and kept things that I</p> <p>3 thought would be of interest or that I might want</p> <p>4 to look at someday, and so, you know, I have lots</p> <p>5 of space on the hard drive, so I saved them.</p> <p>6 Q. Okay. But to the extent you thought an</p> <p>7 electronic document would not be of interest or</p> <p>8 you may not need in the future, did you dispose of</p> <p>9 those type of documents before your conversation</p> <p>10 with Jane Lamborn in 2003?</p> <p>11 A. Yeah.</p> <p>12 Q. Okay.</p> <p>13 A. But, like I said, they're usually</p> <p>14 somebody says "Let's go get pizza at noon," you</p> <p>15 know, and I write back and I say, "Okay. I'll be</p> <p>16 there."</p> <p>17 Those ones go in the trash.</p> <p>18 Q. Okay. All right. I'm going to follow</p> <p>19 up with some of the testimony you gave earlier</p> <p>20 this morning.</p> <p>21 A. Can we take a break?</p> <p>22 MR. MALONEY: Sure. Yes. Of course.</p>
<p style="text-align: right;">Page 203</p> <p>1 Lamborn, who did you give the documents to?</p> <p>2 A. On those rare occasions when something</p> <p>3 came across that -- that -- like a piece of mail</p> <p>4 or something like that or a -- I would typically</p> <p>5 give them to Janet Alexander.</p> <p>6 Q. Okay. Did Jane Lamborn or Janet</p> <p>7 Alexander ever ask you questions about the</p> <p>8 documents you gave to them?</p> <p>9 A. I don't remember that they did.</p> <p>10 Q. Before your meeting with Jane Lamborn</p> <p>11 did you continue to dispose of hard copy documents</p> <p>12 that you had no need of?</p> <p>13 A. Yes.</p> <p>14 Q. And before the conversation with Jane</p> <p>15 Lamborn --</p> <p>16 A. Let's put it this way: Before I was</p> <p>17 told to preserve documents I didn't preserve</p> <p>18 documents.</p> <p>19 Q. And that would apply to electronic</p> <p>20 documents as well?</p> <p>21 A. I tend to be a pack rat, so electronic</p> <p>22 documents are pretty much there.</p>	<p style="text-align: right;">Page 205</p> <p>1 VIDEOGRAPHER: We're now going off the</p> <p>2 video record at approximately 3:51.</p> <p>3 (Thereupon a recess was taken at</p> <p>4 3:51 p.m. and the deposition resumed at 4:01</p> <p>5 p.m.)</p> <p>6 VIDEOGRAPHER: We're back on the video</p> <p>7 record at approximately 4:01.</p> <p>8 BY MR. MALONEY:</p> <p>9 Q. Mr. Walker, do you recall testifying</p> <p>10 earlier this morning about contracts the Office of</p> <p>11 General Services made with -- or made for the</p> <p>12 purchase of drugs?</p> <p>13 A. Yes.</p> <p>14 Q. And I believe that was -- you learned of</p> <p>15 those contracts during your time with the -- was</p> <p>16 it the California Institution for Men?</p> <p>17 A. That was where I worked with them the</p> <p>18 most.</p> <p>19 Q. Okay.</p> <p>20 A. But I -- to be accurate, I -- I knew</p> <p>21 about them when I was at -- Patton --</p> <p>22 Oh. Yes. Let's put the microphone on.</p>

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<p style="text-align: right;">Page 206</p> <p>1 I knew about them when I was at Patton 2 Hospital. 3 Q. Okay. Do you know if OGS entered in to 4 those contracts with wholesalers? 5 A. They did. 6 They -- they created a primed vendor 7 contract first as an experiment, and then moved 8 forward, and during the experimental time my 9 institution was one of the sites to do it, both 10 Patton and CIM. 11 Q. Okay. And are you aware of any OES 12 contracts for the purchase of drugs with 13 manufacturers? 14 MR. FISHER: Just to make the record -- 15 I think it's DGS. 16 MR. MALONEY: Oh, DGS. I apologize. 17 THE WITNESS: Yes. They -- they do 18 contracts with manufacturers on a bid basis. 19 BY MR. MALONEY: 20 Q. Okay. And do you have a general 21 understanding of the proportion of contracts that 22 were with wholesalers as proposed to portion of</p>	<p style="text-align: right;">Page 208</p> <p>1 earlier today about a spread sheet you built 2 incorporating WAC prices that you eventually gave 3 to Len Terra? 4 A. A number of spread sheets. 5 Q. Okay. And do you recall the -- when -- 6 approximately when you first created a spread 7 sheet incorporating WAC prices? 8 A. Probably around the time that that 9 document that -- that I wrote, that gave out the 10 plan of how we were going to proceed and saying 11 that I would get the -- the prices from First 12 DataBank through George Pennebaker. 13 Q. Okay. 14 A. Because I had to get the -- we had to 15 order those special, and that was either the 16 second time we had done it or the first time. 17 Q. Okay. That -- I don't have the exhibit 18 here, but do you recall that that document was -- 19 excuse me -- created in 1996? 20 A. I think I remember seeing in there that 21 it was '96, but we should look up to be sure of 22 the date.</p>
<p style="text-align: right;">Page 207</p> <p>1 contracts that were with manufacturers? 2 A. I think we had a single contract with 3 McKesson at the time. 4 I'm unaware of any other contracts with 5 wholesalers. 6 Q. Okay. Do you know if the contract with 7 McKesson covered the majority of drugs purchased 8 by -- or I guess by DGS or the agencies you worked 9 for? 10 A. Well, it covered the -- the bulk of the 11 drugs that we needed to buy at the institutions I 12 was at. 13 Q. Okay. Okay. 14 A. And I was more aware of those at -- at 15 CIM. 16 Q. Okay. 17 A. Just to clarify, there was another 18 pharmacist that handled that at Patton. 19 Q. Okay. Are you aware of any instance 20 where MediCal directly purchased drugs? 21 A. No. 22 Q. Okay. And do you also recall testifying</p>	<p style="text-align: right;">Page 209</p> <p>1 Q. Okay. 2 A. I think it was 12-12-96 or something; 3 wasn't it? 4 Q. Actually, it's two exhibits, Exhibit 5 Walker 2 and Walker 3. 6 A. I don't have these in order. 7 Oh, here we go. 8 Doesn't have a date. I'm not sure of 9 what time we -- I did that. 10 Q. Okay. 11 A. Honestly, it might have been before '96. 12 Q. Okay. If you look at Exhibit 3 -- 13 A. What does it look like? 14 Okay. I have too many pieces of paper 15 here, and I just imagine what you guys have to go 16 through. 17 MR. FISHER: You want me just to hand it 18 to him? 19 MR. MALONEY: Sure. 20 MR. FISHER: This is what it looks like. 21 THE WITNESS: I'll just look at yours. 22 BY MR. MALONEY:</p>

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<p style="text-align: right;">Page 210</p> <p>1 Q. This document describes a restructuring 2 of drug ingredient cost reimbursement that 3 incorporates WAC pricing; right? 4 A. Uh-huh. 5 Q. And in the upper righthand corner it has 6 a handwritten note? 7 A. "12-12-96." 8 Q. And this is your handwriting; correct? 9 A. Yes. It actually says created 12-12-96 10 by me now that I look at it. 11 Q. Okay. So it's accurate to say that you 12 were considering WAC prices -- 13 A. As early as that. 14 Q. -- as early as that? Okay. 15 And does that refresh your recollection 16 as to whether you or DHS requested WAC prices in 17 1996? 18 A. Yes. 19 I -- I think that we did in 1996 or 20 perhaps early '97, but -- I'm just not saying that 21 that was the first time. 22 Q. Okay. Okay. When you collected</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. Okay. 2 A. I remember -- 3 Well, yeah. 4 Go ahead. 5 MR. MALONEY: Okay. I think I'm done. 6 I'll pass the witness for now and I'll 7 reserve a little time if I have any follow-up 8 questions. 9 10 EXAMINATION 11 MS. BERWANGER: 12 Q. Again, for the record my name is Lara 13 Berwanger. I represent the Defendant Sandoz, Inc. 14 Mr. Walker, are you familiar with my 15 client, Sandoz, Inc.? 16 A. As Sandoz, yes. 17 Q. But you are familiar with the name? 18 A. Although I was thinking that they had 19 been bought out by Novartis some years back. 20 Q. Sandoz is part of the Novartis family, 21 without getting too in detail about the corporate 22 structure.</p>
<p style="text-align: right;">Page 211</p> <p>1 documents for this case, did you collect the 2 spread sheets that you created incorporating WAC 3 prices? 4 A. You have all the electronic ones. 5 Q. Okay. Do you recall if you collected 6 the spread sheet that you created relating to WAC 7 prices around the timeframe of '96 or '97? 8 A. I would imagine that it's in there. 9 Q. Okay. 10 A. I don't recall specifically seeing the 11 file. 12 Q. Okay. 13 A. You know, I've got -- I think I've got 14 over a million files. 15 Q. Okay. But in your search for documents 16 would this document -- this spread sheet and 17 documents like it have been covered by your 18 search? 19 A. I think so. 20 Keep in mind that when it came to 21 electronic documents I didn't search real hard. I 22 gave you everything.</p>	<p style="text-align: right;">Page 213</p> <p>1 Are you also familiar with the name 2 Geneva Pharmaceuticals, Inc.? 3 A. Yes. 4 Q. Do you understand that Geneva 5 Pharmaceuticals, Inc., and Sandoz, Inc., are the 6 same company, there was just a name change at some 7 point from Geneva Pharmaceuticals, Inc., to 8 Sandoz, Inc.? 9 A. I'm not sure that I knew that, but I 10 know that a number of name brand companies buy or 11 develop generic houses to market their products as 12 well -- additional revenue stream. 13 Q. Actually, the Sandoz, Inc., that I 14 represent is the generic manufacturer. 15 There was a company known as Sandoz in 16 the 1990s which did manufacture brand products, 17 but that is not my client. 18 A. Okay. That's good to know. 19 Q. Are you familiar -- 20 A. Be honest with you, I didn't know Sandoz 21 still existed. 22 Q. Okay.</p>

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<p>1 A. I'm glad the name is still there though.</p> <p>2 Q. So my client, Sandoz, for the record is</p> <p>3 the new name of the generic pharmaceutical company</p> <p>4 Geneva Pharmaceuticals, Inc.</p> <p>5 A. I didn't know that.</p> <p>6 And Geneva Pharmaceuticals is Geneva</p> <p>7 Generics?</p> <p>8 Q. Yes, it was once upon a time known as</p> <p>9 Geneva Generics.</p> <p>10 Very good.</p> <p>11 A. Okay.</p> <p>12 Q. While I'm going through some questions</p> <p>13 with you I might from time-to-time refer to</p> <p>14 "Sandoz, Inc.," I may refer to "Geneva</p> <p>15 Pharmaceuticals, Inc."</p> <p>16 Can we agree I'm speaking about the same</p> <p>17 company?</p> <p>18 A. If I get confused, I'll tell you.</p> <p>19 Q. Please do.</p> <p>20 Have you ever spoken with anyone from</p> <p>21 Geneva?</p> <p>22 A. I've spoken to Sandoz pre-Novartis times</p>	<p>1 A. That would be true -- never having had a</p> <p>2 conversation with anybody -- that I can recall.</p> <p>3 You're liable to pull out a piece of</p> <p>4 paper that has something, but I don't remember it</p> <p>5 at this point.</p> <p>6 MR. FISHER: Little voices stay in your</p> <p>7 head.</p> <p>8 MS. BERWANGER: Can you please mark this</p> <p>9 as Exhibit 19.</p> <p>10 (Exhibit Walker 019 was marked for</p> <p>11 Identification.)</p> <p>12 BY MS. BERWANGER:</p> <p>13 Q. Mr. Walker, the Court Reporter has put</p> <p>14 in front of you a document marked Exhibit 19 to</p> <p>15 your deposition.</p> <p>16 The document comes from the files of my</p> <p>17 client and bears the Bates stamp SANDOZ CALI</p> <p>18 3000314 through 3000368.</p> <p>19 A. Okay.</p> <p>20 Q. I will give you a minute to just quickly</p> <p>21 flip through the document.</p> <p>22 There isn't very much to read, but you</p>
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<p>1 many times, but I don't recall speaking to anybody</p> <p>2 from Geneva.</p> <p>3 Q. So it's fair --</p> <p>4 A. More often than not we negotiated</p> <p>5 contracts with the name brand pharmaceutical</p> <p>6 manufacturers for single source drugs, and it was</p> <p>7 unusual for Geneva or some -- you know, a generic</p> <p>8 house to come in and talk to us.</p> <p>9 Q. Okay. So it's fair to say that, sitting</p> <p>10 here today, you can't recall any discussions with</p> <p>11 anyone from Geneva where the topic of AWP was</p> <p>12 discussed?</p> <p>13 A. (Nodding head)</p> <p>14 Q. It's fair to say that you can't recall</p> <p>15 any conversations with anyone from Geneva where</p> <p>16 WAC was discussed?</p> <p>17 A. No. I can't recall any conversations,</p> <p>18 period.</p> <p>19 Q. Is it fair to say then you can't recall</p> <p>20 any conversations where someone from Geneva made a</p> <p>21 statement about AWP or WAC that you found to be</p> <p>22 false or misleading?</p>	<p>1 can just take a moment to familiarize yourself</p> <p>2 with it.</p> <p>3 A. Go back to -- this is going back a ways.</p> <p>4 Q. Yes, it is.</p> <p>5 A. Okay.</p> <p>6 Q. If you'll turn to the first page, you</p> <p>7 see there's a cover letter dated August 4th, 1992</p> <p>8 from Ron Hartmann to the Department of Health</p> <p>9 Services, specifically to Mr. Neff; correct?</p> <p>10 A. Uh-huh.</p> <p>11 Q. And the letter purports to include a</p> <p>12 rebate check from Geneva Pharmaceuticals for the</p> <p>13 drugs reimbursed from January 1st, 1992 through</p> <p>14 March 31st, 1992; is that correct?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Mr. Hartmann also says that he's</p> <p>17 including a print-out identifying the A-M-P or the</p> <p>18 AMP and calculating a rebate for each product; is</p> <p>19 that correct?</p> <p>20 A. That's what it says here.</p> <p>21 Q. Would you turn to page Bates stamped</p> <p>22 3000343.</p>

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<p>1 A. Okay.</p> <p>2 Q. See there's a schedule there at the top</p> <p>3 which is titled "Medicaid First Quarter 1992;"</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. And there are several columns below the</p> <p>7 title.</p> <p>8 From the left the columns read "Item,</p> <p>9 Abbreviation Information Number, Product," look</p> <p>10 like the abbreviation for "Average Manufacturing</p> <p>11 Cost," abbreviation for "Quantity, Total Cost, and</p> <p>12 10 Percent Rebate;" correct?</p> <p>13 A. That's what the headings say.</p> <p>14 Q. And there's several products listed</p> <p>15 under the "Product" column; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And for many of these products there's a</p> <p>18 rebate for the product listed under the 10 percent</p> <p>19 rebate column; correct?</p> <p>20 A. Yes.</p> <p>21 Q. Would you agree with me that it's likely</p> <p>22 that the Average Manufacturer Cost column is what</p>	<p>1 moment --</p> <p>2 I apologize.</p> <p>3 A. That's the one we just looked at?</p> <p>4 Q. The one we just looked at.</p> <p>5 A. Okay.</p> <p>6 Q. Sitting here today, do you have any</p> <p>7 reason to believe that this letter and the</p> <p>8 attachments were not actually received by Mr.</p> <p>9 Neff?</p> <p>10 MR. FISHER: Objection as to form.</p> <p>11 THE WITNESS: I don't know whether he</p> <p>12 received them or not.</p> <p>13 Based upon what -- I don't have reason</p> <p>14 to believe they weren't received or -- or not,</p> <p>15 frankly.</p> <p>16 I don't know.</p> <p>17 BY MS. BERWANGER:</p> <p>18 Q. Okay. You can go to Exhibit 20 now.</p> <p>19 Exhibit 20 for the record is a document</p> <p>20 produced to us by the State of California Bates</p> <p>21 stamped CAAG/DHS-SAN000063 through 00078.</p> <p>22 VIDEOGRAPHER: Counsel, we're down to</p>
Page 219	Page 221
<p>1 Mr. Hartmann was referring to when he said that he</p> <p>2 was transmitting AMPS under the rebate?</p> <p>3 A. The NDC is on page 27. Let's see if I</p> <p>4 can find page 27.</p> <p>5 I could tell you. I think it's on 26.</p> <p>6 Q. Page 27 actually, I believe.</p> <p>7 Those NDCs were only the NDCs that were</p> <p>8 invalid or disputed.</p> <p>9 A. I don't know if these are the AMPs or</p> <p>10 not.</p> <p>11 They may be. Certainly could be.</p> <p>12 Q. I can represent to you that these</p> <p>13 actually are the AMPs for the product.</p> <p>14 A. All right.</p> <p>15 MS. BERWANGER: You can put this</p> <p>16 document aside.</p> <p>17 Okay. Please mark this Exhibit 20.</p> <p>18 (Exhibit Walker 020 was marked for</p> <p>19 Identification.)</p> <p>20 THE WITNESS: Thank you.</p> <p>21 BY ATTORNEY THREE:</p> <p>22 Q. Actually, going back to Exhibit 19 for a</p>	<p>1 about 10 minutes.</p> <p>2 MS. BERWANGER: Okay. Thank you.</p> <p>3 VIDEOGRAPHER: Okay.</p> <p>4 BY MS. BERWANGER:</p> <p>5 Q. Have you ever seen this document before?</p> <p>6 A. I don't remember seeing it.</p> <p>7 Q. Have you ever seen a document like it?</p> <p>8 A. I've seen checks from manufacturers.</p> <p>9 I have seen letters from manufacturers</p> <p>10 to -- people.</p> <p>11 I don't know that I've seen them to the</p> <p>12 accounting office or not.</p> <p>13 I'm not sure that I have seen this kind</p> <p>14 of document before today that lists the average</p> <p>15 manufacturer costs and the 10 percent supplemental</p> <p>16 rebate so nicely written out.</p> <p>17 Q. Would you turn to the third page of the</p> <p>18 document.</p> <p>19 A. This one here?</p> <p>20 Q. Actually, the one right before it.</p> <p>21 A. The letter?</p> <p>22 Q. Yes, the letter.</p>

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<p>1 This is another letter from Ron 2 Hartmann, this time to the Accounting Section, the 3 State of California Department of Health Services 4 dated May 10th, 1995 which again states that its 5 transmitting a print-out identifying AMPs and 6 calculated rebates for products for October 1st, 7 1994 through December 31st, 1994; correct? 8 A. Uh-huh. 9 Q. And then you go ahead to the -- two 10 pages, the page Bates stamp CAAG-DHS-SAN 000067, 11 there's a schedule similar to the one we looked at 12 before with the calculation for the 10 percent 13 supplemental rebate, and the Average Manufacturing 14 Price for several products; correct? 15 A. Yes. 16 MS. BERWANGER: You can put that 17 document aside. 18 Please mark this Exhibit 21. 19 (Exhibit Walker 021 was marked for 20 Identification.) 21 THE WITNESS: Thank you. 22 BY MS. BERWANGER:</p>	<p>1 period October 1st, 1995 through December 31st, 2 1995; correct? 3 A. That's correct. 4 Q. And if you turn to the page Bates 5 stamped 303, this is another schedule which 6 contains the Average Manufacturing Price for 7 several Sandoz products; correct? 8 A. So it appears. This is -- the NDC 9 numbers are all six-digit numbers, and NDCs 10 typically are 11 digits, so am I to assume that 11 00781 is prepended to each of these NDCs? 12 Q. I believe that's correct. 13 That's impressive that you know the 14 labeler code for Geneva. 15 A. I read it here on the previous document, 16 but it sticks in my -- 17 Q. Okay. 18 A. But it looked familiar. 19 VIDEOGRAPHER: Five minutes. 20 THE WITNESS: Mainly from working in 21 pharmacies in the past. 22 BY MS. BERWANGER:</p>
Page 223	Page 225
<p>1 Q. The Court Reporter has placed in front 2 of you Exhibit -- Exhibit 21 to your deposition, 3 Bates stamped CAAG/DHS-SAN000296 through 329, and 4 this document was also produced to us from the 5 State of California. 6 You can take your time looking at the 7 document. 8 I'll represent to you I'm going to be 9 only covering the letter found on the fourth page 10 of the document and the page Bates stamped 303. 11 A. Okay. 12 Q. Would you turn to the fourth page of the 13 document. 14 A. The letter? 15 Q. The letter. 16 This is another letter from Ron Hartman 17 to the State of California dated May 21st, 1996? 18 A. Uh-huh. 19 Q. Which includes a print-out identifying 20 which -- I'm sorry -- which says that he's 21 transmitting a print-out identifying the AMP and 22 the calculated rebate for each product for the</p>	<p>1 Q. Sure. 2 Mr. Walker, is it fair to say based on 3 these documents that from the time period 1992 4 through 1996 California received AMPS for several 5 products directly from Geneva? 6 A. Well, it would appear that you were 7 sending something called -- average manufacturer 8 cost to our accounting department. 9 Q. Or to Michael Neff; correct? 10 A. In the early days, yes. 11 Q. And Ron Hartmann represented to the 12 State in the cover letter that he was transmitting 13 AMPs; correct? 14 A. On at least one of those. 15 Q. I believe in all three. 16 A. Was it on all three? 17 Where did they go? 18 I'll take your word for it -- 19 Q. Okay. 20 A. -- if it's on there. 21 Q. I believe it's on there. 22 A. Because I know I can trust you.</p>

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<p style="text-align: right;">Page 226</p> <p>1 Q. Of course.</p> <p>2 A. Yeah, it says it on that one.</p> <p>3 Q. The Department could have compared the</p> <p>4 AMPs for -- from Sandoz to the AWP's for Sandoz</p> <p>5 products found in First DataBank; correct?</p> <p>6 MR. FISHER: Objection to form.</p> <p>7 THE WITNESS: Had I known that we were</p> <p>8 getting those, and honest to goodness I don't</p> <p>9 remember ever seeing that document, it would have</p> <p>10 been possible for us to do that.</p> <p>11 BY MS. BERWANGER:</p> <p>12 Q. Would that have been something that you</p> <p>13 would have liked to have done?</p> <p>14 MR. FISHER: Objection as to form.</p> <p>15 THE WITNESS: It -- it potentially would</p> <p>16 have been useful.</p> <p>17 BY MS. BERWANGER:</p> <p>18 Q. Because AMPs are a better estimate of</p> <p>19 actual acquisition costs than AWP; correct?</p> <p>20 MR. FISHER: Objection as to form.</p> <p>21 THE WITNESS: In my experience they</p> <p>22 certainly can be.</p>	<p style="text-align: right;">Page 228</p> <p>1 California.</p> <p>2 Thank you.</p> <p>3 THE WITNESS: Thank you.</p> <p>4 VIDEOGRAPHER: This concludes today's</p> <p>5 video deposition of Vic Walker.</p> <p>6 We are now back off the video record at</p> <p>7 approximately 4:36.</p> <p>8 (Thereupon the deposition was</p> <p>9 adjourned at. 4:36 p.m.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 --o0o--</p> <p>16 Signed under penalty of perjury:</p> <p>17</p> <p>18</p> <p>19 _____</p> <p>20 VIC WALKER</p> <p>21 _____</p> <p>22 Date</p>
<p style="text-align: right;">Page 227</p> <p>1 MS. BERWANGER: No further questions at</p> <p>2 this time.</p> <p>3 Subject to any questions from other</p> <p>4 counsel or any further document production from</p> <p>5 the State I can pass the witness.</p> <p>6 VIDEOGRAPHER: We've got about a minute</p> <p>7 left on these, so if there's any more questions I</p> <p>8 need to change the tape.</p> <p>9 MR. MALONEY: Why don't we stop for now</p> <p>10 and we'll discuss, see if there's any need.</p> <p>11 VIDEOGRAPHER: Now going off the video</p> <p>12 record at approximately 4:31.</p> <p>13 (Thereupon a recess was taken at</p> <p>14 4:31 p.m. and the deposition resumed at 4:36</p> <p>15 p.m.)</p> <p>16 VIDEOGRAPHER: We're back on the video</p> <p>17 record at approximately 4:36.</p> <p>18 MR. MALONEY: For the record, this is</p> <p>19 Michael Maloney on behalf of the Dey and Mylan</p> <p>20 Defendants.</p> <p>21 We're finished with the deposition</p> <p>22 subject to production of further documents from</p>	<p style="text-align: right;">Page 229</p> <p>1 --o0o--</p> <p>2</p> <p>3 I, CAROL NYGARD DROBNY, a Certified Shorthand</p> <p>4 Reporter of the State of California, duly authorized to</p> <p>5 administer oaths, do hereby certify:</p> <p>6 That I am a disinterested person herein; that</p> <p>7 the Witness, VIC WALKER, named in the foregoing</p> <p>8 deposition was by me duly sworn to testify the truth,</p> <p>9 the whole truth, and nothing but the truth; that the</p> <p>10 deposition was reported in shorthand by me, CAROL NYGARD</p> <p>11 DROBNY, a Certified Shorthand Reporter of the State of</p> <p>12 California, and thereafter transcribed into typewriting.</p> <p>13 That before completion of the deposition,</p> <p>14 review of the transcript [] was [X] was not requested.</p> <p>15 If requested, any changes made by the deponent (and</p> <p>16 provided to the Reporter) during the period allowed are</p> <p>17 appended hereto.</p> <p>18 Dated: May 22, 2009</p> <p>19</p> <p>20 _____</p> <p>21 CAROL NYGARD DROBNY CSR #4018</p> <p>22</p>

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EXHIBIT 2

Ahrens, Katherine

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Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
In re: PHARMACEUTICAL) MDL No. 1456
INDUSTRY AVERAGE WHOLESALE)
PRICE LITIGATION) Master File No.
-----) 01-12257-PBS
THIS DOCUMENT RELATES TO:) Subcategory Case
State of California ex rel.) No. 06-11337
Ven-A-Care of the Florida) Hon.
Keys, Inc. v. Abbott Labs,) Patti B. Saris
Inc, et al.,)
Civil Action No.)
03-11226-PBS)
-----X

VIDEOTAPED DEPOSITION OF

KATHERINE AHRENS

Wednesday, May 20, 2009

Sacramento, California

REPORTED BY: JOHN P. SQUIRES, CCRR, CSR No. 2001

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Ahrens, Katherine

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Page 2	Page 4
<p>1 APPEARANCES OF COUNSEL:</p> <p>2</p> <p>3 For Dey, Inc., Dey, L.P., Mylan, Inc., and Mylan</p> <p>4 Pharmaceuticals, Inc.:</p> <p>5 KELLEY DRYE & WARREN, LLP</p> <p>6 BRENDAN CYR, ESQ.</p> <p>7 101 Park Avenue</p> <p>8 New York, New York 10178</p> <p>9 212.808.7800</p> <p>10 bcyr@kelleydrye.com</p> <p>11</p> <p>12</p> <p>13 For the California Department of Health Care</p> <p>14 Services:</p> <p>15 OFFICE OF THE ATTORNEY GENERAL</p> <p>16 STATE OF CALIFORNIA</p> <p>17 RANDAL L. GLASER, DEPUTY ATTORNEY GENERAL</p> <p>18 110 West A Street, Suite 1100</p> <p>19 San Diego, California 92101</p> <p>20 619.688.6411</p> <p>21 Randal.glaser@doj.ca.gov</p> <p>22</p>	<p>1 APPEARANCES OF COUNSEL: (CONTINUED)</p> <p>2</p> <p>3 For Sandoz, Inc.</p> <p>4 WHITE & CASE</p> <p>5 LARA A. BERWANGER, ESQ.</p> <p>6 1155 Avenue of the Americas</p> <p>7 New York, New York 10036-2787</p> <p>8 212.819.2549</p> <p>9 lberwanger@whitecase.com</p> <p>10</p> <p>11</p> <p>12 For Ven-A-Care of the Florida Keys:</p> <p>13 KRAUSE, KALFAYAN, BENINK & SLAVENS, LLP</p> <p>14 DAVID B. ZLOTNICK, ESQ.</p> <p>15 625 Broadway, Suite 635</p> <p>16 San Diego, California 92101</p> <p>17 619.232.0331</p> <p>18 dzlotnick@kkbs-law.com</p> <p>19</p> <p>20 ALSO PRESENT:</p> <p>21 Suzanne Graydon, Investigative Auditor II</p> <p>22 Benjamin Lewis, Videographer</p>
Page 3	Page 5
<p>1 APPEARANCES OF COUNSEL: (CONTINUED)</p> <p>2</p> <p>3 For the California Department of Health Care</p> <p>4 Services:</p> <p>5 OFFICE OF THE ATTORNEY GENERAL</p> <p>6 STATE OF CALIFORNIA</p> <p>7 RAYMOND J. LIDDY, Deputy Attorney General</p> <p>8 1455 Frazee Road, Suite 315</p> <p>9 San Diego, California 92108</p> <p>10 619.688.6482</p> <p>11 raymond.liddy@doj.ca.gov</p> <p>12</p> <p>13 -and-</p> <p>14</p> <p>15 OFFICES OF LEGAL SERVICES</p> <p>16 DEPARTMENT OF HEALTH CARE SERVICES</p> <p>17 BARBARA B. DAYVAULT, SENIOR COUNSEL</p> <p>18 1501 Capitol Avenue</p> <p>19 Sacramento, California 95814</p> <p>20 916.440.7854</p> <p>21 bdayvaul@dhs.ca.gov</p> <p>22</p>	<p>1 I N D E X</p> <p>2</p> <p>3 WITNESS: KATHERINE AHRENS PAGE</p> <p>4 Examination By Mr. Cyr..... 010</p> <p>5 Examination By Ms. Berwanger..... 190</p> <p>6</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 NUMBER DESCRIPTION PAGE</p> <p>10 Exhibit Ahrens 001 - Medi-Cal Contracting</p> <p>11 Section Pharmacy Pricing</p> <p>12 Calculation Examples..... 094</p> <p>13 Exhibit Ahrens 002 - Undated letter, Lewis to</p> <p>14 Salyer..... 121</p> <p>15 Exhibit Ahrens 003 - Medi-Cal Drug Rebate</p> <p>16 Agreement..... 121</p> <p>17 Exhibit Ahrens 004 - 10-14-03 e-mail from Berk</p> <p>18 to Ahrens, attachments.... 137</p> <p>19 Exhibit Ahrens 005 - 9-6-02 letter from Hillbom</p> <p>20 to Johnston..... 143</p> <p>21 Exhibit Ahrens 006 - E-mail string and</p> <p>22 attachments..... 147</p>

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<p>1 EXHIBITS (CONTINUED)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit Ahrens 007 - 5-3-04 e-mail from Walker</p> <p>4 to Agnew, et al.,</p> <p>5 attachments..... 152</p> <p>6 Exhibit Ahrens 008 - State of California's</p> <p>7 Objections And Responses</p> <p>8 to Defendant Abbott's</p> <p>9 First Set of</p> <p>10 Interrogatories..... 167</p> <p>11 Exhibit Ahrens 009 - E-mail string..... 195</p> <p>12 Exhibit Ahrens 010 - Database of contracts..... 198</p> <p>13 Exhibit Ahrens 011 - 8-4-92 letter from</p> <p>14 Hartmann to Neff..... 202</p> <p>15 Exhibit Ahrens 012 - Remittance Advice,</p> <p>16 attachments..... 204</p> <p>17 Exhibit Ahrens 013 - Check, attachments..... 205</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 name is Brendan Cyr. I'm with the law firm of</p> <p>2 Kelly Drye & Warren in New York and I represent</p> <p>3 Dey, Inc., Dey, L.P., Mylan, Inc., and Mylan</p> <p>4 Pharmaceuticals.</p> <p>5 MS. BERWANGER: Lara Berwanger, from</p> <p>6 White & Case, representing Sandoz, Inc.</p> <p>7 MR. GLASER: My name is Randy Glaser.</p> <p>8 I'm with the California of Department of Justice.</p> <p>9 I'm here on behalf of the Department of Health</p> <p>10 Services and I'll be defending Ms. Ahrens today.</p> <p>11 MR. LIDDY: Raymond Liddy, also with the</p> <p>12 DOJ.</p> <p>13 MS. DAYVAULT: Barbara Dayvault, with</p> <p>14 the Department of Health Care Services.</p> <p>15 MS. GRAYDON: Suzanne Graydon, with</p> <p>16 California DOJ.</p> <p>17 MR. ZLOTNICK: David Zlotnick,</p> <p>18 representing Ven-A-Care of the Florida Keys.</p> <p>19 THE VIDEOGRAPHER: Thank you.</p> <p>20 Will the reporter please swear in the</p> <p>21 witness.</p> <p>22</p>
Page 7	Page 9
<p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE VIDEOGRAPHER: Good morning. We're</p> <p>4 on the video record, ladies and gentlemen, at</p> <p>5 9:05.</p> <p>6 I'm Benjamin Lewis, with Henderson Legal</p> <p>7 Services in Washington D.C. The phone number</p> <p>8 there is 202 220-4158.</p> <p>9 This is a matter pending before the U.S.</p> <p>10 District Court, District of Massachusetts, in the</p> <p>11 case captioned Pharmaceutical Industry Average</p> <p>12 Wholesale Price Litigation, Case Number 01-12257-</p> <p>13 PBS.</p> <p>14 This is the beginning of tape 1 of</p> <p>15 today's video deposition of Katherine Ahrens on</p> <p>16 May 20, 2009.</p> <p>17 We are located at 1300 I Street,</p> <p>18 Sacramento, California 94244.</p> <p>19 Counsel, would you please identify</p> <p>20 yourselves, beginning with the questioning</p> <p>21 attorney.</p> <p>22 MR. CYR: Good morning, Ms. Ahrens. My</p>	<p>1 On Wednesday, May 20, 2009, at the hour</p> <p>2 of 9:05 of said day, at the Office of the Attorney</p> <p>3 General, State of California Department of</p> <p>4 Justice, 1300 I Street, Sacramento, California,</p> <p>5 before me, JOHN P. SQUIRES, a Certified Shorthand</p> <p>6 Reporter, personally appeared KATHERINE AHRENS,</p> <p>7 who was examined as a deponent in said cause.</p> <p>8</p> <p>9 THE VIDEOGRAPHER: You may proceed.</p> <p>10 MR. CYR: Before we get started with the</p> <p>11 deposition, I'd just like to clarify something for</p> <p>12 the record.</p> <p>13 We had served a notice, yesterday I</p> <p>14 believe, for Ms. Ahrens' deposition and the</p> <p>15 deposition notice itself erroneously noted that</p> <p>16 you were being noticed as a 30(b)(6) witness and</p> <p>17 it was actually our intention to notice you -- or</p> <p>18 notice Ms. Ahrens as a 30(b)(1) witness in her</p> <p>19 individual capacity. It's our understanding --</p> <p>20 and I think Mr. Glaser and I had a discussion off</p> <p>21 the record before -- that Ms. Ahrens will be</p> <p>22 appearing in her individual capacity as a 30(b)(1)</p>

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<p style="text-align: right;">Page 10</p> <p>1 witness.</p> <p>2 Mr. Glaser, can you confirm that?</p> <p>3 MR. GLASER: Yeah, that's correct.</p> <p>4 MR. CYR: Okay.</p> <p>5</p> <p>6 KATHERINE AHRENS,</p> <p>7 the deponent herein, having been first duly sworn,</p> <p>8 was examined and testified as follows:</p> <p>9</p> <p>10 EXAMINATION</p> <p>11 Q. Good morning, Ms. Ahrens.</p> <p>12 Could you state and spell your name for</p> <p>13 the record, please.</p> <p>14 A. Katherine, K-a-t-h-e-r-i-n-e, last name</p> <p>15 Ahrens, A-h-r-e-n-s.</p> <p>16 Q. Ms. Ahrens, did you used to be known by</p> <p>17 another name, another last name?</p> <p>18 A. Yes.</p> <p>19 Q. What was that last name, please?</p> <p>20 A. One would have been Salz, S-a-l-z, as in</p> <p>21 zebra.</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">Page 12</p> <p>1 A. I don't recall the year. It was a few</p> <p>2 years ago.</p> <p>3 Q. Okay. More than five years ago?</p> <p>4 A. I'm not sure.</p> <p>5 Q. Okay. What was the nature of the</p> <p>6 lawsuit? Strike that.</p> <p>7 What were the nature of the claims in</p> <p>8 the lawsuit?</p> <p>9 A. The beneficiary was challenging our</p> <p>10 authority to establish -- or to make a drug, a</p> <p>11 certain drug prior authorized, to require prior</p> <p>12 authorization for a certain drug, and also</p> <p>13 challenging the process by which we established</p> <p>14 criteria and the validity of the criteria for that</p> <p>15 particular drug.</p> <p>16 Q. Okay. And what was the drug at issue?</p> <p>17 A. Serostim.</p> <p>18 Q. Serostim?</p> <p>19 And what is that drug for?</p> <p>20 A. It's a human growth hormone that is</p> <p>21 approved by the Food and Drug Administration for</p> <p>22 the treatment of kakexia associated with AIDS or</p>
<p style="text-align: right;">Page 11</p> <p>1 A. And my maiden name was Cabacungan, C-a-</p> <p>2 b-a-c-u-n-g-a-n.</p> <p>3 Q. Okay. And when did your name change</p> <p>4 from Cabacungan to Ahrens?</p> <p>5 A. June 29, 2002.</p> <p>6 Q. Okay. And did it change because you</p> <p>7 were married?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Did you marry Tom Ahrens?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Have you ever been deposed</p> <p>12 before?</p> <p>13 A. Yes.</p> <p>14 Q. How many times?</p> <p>15 A. Once.</p> <p>16 Q. What was the -- what type of matter were</p> <p>17 you deposed in?</p> <p>18 A. Well, it was a lawsuit.</p> <p>19 Q. Okay.</p> <p>20 A. A beneficiary suing the State, suing</p> <p>21 Medi-Cal.</p> <p>22 Q. Okay. When were you deposed?</p>	<p style="text-align: right;">Page 13</p> <p>1 AIDS wasting -- not AIDS wasting. For AIDS or</p> <p>2 HIV-associated illness.</p> <p>3 Q. Okay. What was the result of that</p> <p>4 lawsuit?</p> <p>5 A. The beneficiary lost the lawsuit.</p> <p>6 Q. So the drug remained as a prior</p> <p>7 authorization status?</p> <p>8 A. Um-hmm.</p> <p>9 Q. What do you mean when you say "prior</p> <p>10 authorization"?</p> <p>11 A. That means that the provider must seek</p> <p>12 approval from Medi-Cal for payment -- for Medi-Cal</p> <p>13 to pay for a product or service.</p> <p>14 Q. Okay.</p> <p>15 A. It's not just drugs that are prior auth.</p> <p>16 Some services are as well. Other services are as</p> <p>17 well.</p> <p>18 Q. Well, and if a service wasn't -- prior</p> <p>19 authorization wasn't required for a service, am I</p> <p>20 correct in assuming that the provider would just</p> <p>21 be able to -- let's say it's a drug. Would the</p> <p>22 provider just be able to dispense the drug and</p>

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<p style="text-align: right;">Page 14</p> <p>1 then submit a claim for reimbursement?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And what did you say the name of</p> <p>4 that drug again was? I'm sorry.</p> <p>5 A. The brand name was Serostim.</p> <p>6 Q. Serostim.</p> <p>7 And it was a brand-name drug?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. Have you ever been deposed in any</p> <p>10 other lawsuits?</p> <p>11 A. No.</p> <p>12 Q. Okay. Have you ever given any other</p> <p>13 type of sworn testimony?</p> <p>14 A. Unless it's sworn testimony when you go</p> <p>15 through a divorce, no, not that I can recall.</p> <p>16 Q. Okay. Were you deposed when you were</p> <p>17 divorced?</p> <p>18 A. No.</p> <p>19 Q. Okay. I'm assuming that any -- did you</p> <p>20 perhaps sign an affidavit during your divorce</p> <p>21 proceedings?</p> <p>22 A. I don't recall --</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And you understand that the</p> <p>3 videotape of this deposition may be used at trial</p> <p>4 at a later date?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Now, I'm going to be asking you a</p> <p>7 series of questions and I would ask that you</p> <p>8 answer the questions verbally, as opposed to, you</p> <p>9 know, shaking your head or nodding your head. The</p> <p>10 court reporter needs to take down your response</p> <p>11 and he can't type down a shake of the head or nod</p> <p>12 of the head.</p> <p>13 I'd ask that you please wait for me to</p> <p>14 finish asking my question before you begin your</p> <p>15 answering your question, and I'll try to do the</p> <p>16 same for you, I'll wait until you finish asking</p> <p>17 the question before I ask my next question. It's</p> <p>18 kind of difficult, once again, for the court</p> <p>19 reporter to take down the testimony if we're both</p> <p>20 talking at the same time.</p> <p>21 If you don't understand a question that</p> <p>22 I've asked, please ask me to clarify and I'll do</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Okay.</p> <p>2 A. -- the process.</p> <p>3 Q. And this may seem like a silly question,</p> <p>4 but I assume nothing at your divorce proceedings</p> <p>5 had anything to do with Medicaid reimbursement for</p> <p>6 prescription drugs.</p> <p>7 A. No.</p> <p>8 Q. Okay.</p> <p>9 MR. GLASER: That's good.</p> <p>10 MR. CYR: Q. Have you ever given sworn</p> <p>11 testimony before a legislative body perhaps?</p> <p>12 A. No.</p> <p>13 Q. Okay. Have you ever prepared testimony</p> <p>14 for someone else to give?</p> <p>15 A. No.</p> <p>16 Q. Okay. I'm just going to go over some of</p> <p>17 the basics of the deposition procedure now.</p> <p>18 You're probably familiar with them, but just to</p> <p>19 make sure you're up to speed.</p> <p>20 You understand that you're under oath</p> <p>21 today and it's -- you're giving testimony, it's</p> <p>22 the same as if you were a witness at a trial?</p>	<p style="text-align: right;">Page 17</p> <p>1 my best to do so.</p> <p>2 If you don't ask to clarify, I'm going</p> <p>3 to assume that you understand the question.</p> <p>4 If you need a break at any time, just</p> <p>5 let me know and we'll try to accommodate you.</p> <p>6 There's one thing I ask, though, that if there is</p> <p>7 a question pending on the record, that you answer</p> <p>8 the question before we take a break.</p> <p>9 From time to time Mr. Glaser or one of</p> <p>10 the other attorneys here may interpose an</p> <p>11 objection to one of my questions, and I'd ask that</p> <p>12 unless you're instructed not to answer the</p> <p>13 question that I've asked you, you are required to</p> <p>14 provide an answer to the question. Do you</p> <p>15 understand that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And just as a courtesy for your</p> <p>18 counsel, you might want to pause a minute -- or</p> <p>19 just for a few moments after I ask my question in</p> <p>20 case Mr. Glaser does intend to pose an objection.</p> <p>21 Okay?</p> <p>22 A. Okay.</p>

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<p>1 Q. Do you understand all those instructions 2 and points I've covered? 3 A. Yes. 4 Q. Okay. Are you currently on any 5 medications? 6 A. Yes. 7 Q. Which ones? 8 A. I'm on Cymbalta. 9 Q. Okay. 10 A. And Restasis. I use over-the-counter 11 Naprosyn. Those are the routine medications. 12 And as needed I use Provigil, hundred 13 milligrams, and Norco, 5 -- well, it's a 10- 14 milligram tablet that I cut in half when I need it 15 for pain. 16 Q. Okay. 17 A. And then various vitamins and 18 supplements. 19 Q. Not counting the vitamins and 20 supplements, ou mentioned about five medications? 21 Is that -- 22 A. I didn't count them.</p>	<p>1 A. Do you mean like study? What do you 2 mean by did I do anything to prepare for the 3 deposition? I got a good night's rest, I mean -- 4 Q. That's good. I wish I could say the 5 same. 6 Well, did you meet with anyone? 7 A. The attorneys, before the deposition. 8 Q. And who specifically did you meet with? 9 A. Randy. 10 Q. Mr. Glaser? 11 A. And Barbara and Ray. 12 Q. I'm sorry. Barbara? 13 MS. DAYVAULT: Dayvault. 14 MR. GLASER: And Mr. Ray Liddy. 15 MR. CYR: Q. And you met with Mr. Liddy 16 as well? 17 A. Yes, as a group, not individually. 18 Q. Right. 19 When did this meeting take place? 20 A. Yesterday. 21 Q. About how long was the meeting? 22 A. About an hour and a half.</p>
Page 19	Page 21
<p>1 Q. Okay. 2 A. Oh, one other, Imitrex nasal spray -- 3 Q. Okay. 4 A. -- as needed. 5 And I forgot one other one. Zoltadem at 6 bedtime. 7 Q. Do any of these medications affect your 8 memory? 9 A. Not that I'm aware of. 10 Q. Okay. Will any of these medications 11 affect your ability to give accurate and truthful 12 testimony today? 13 A. No. 14 Q. Okay. Do you have any medical 15 conditions that might impact your memory? 16 A. Not that I'm aware of. 17 Q. Okay. Do you know of any reason -- any 18 other reason why you might not be able to give 19 full and complete and accurate testimony today? 20 A. No. 21 Q. Okay. Did you do anything to prepare 22 for the deposition today?</p>	<p>1 Q. Hour and a half? 2 And you met with Randy, Barbara and Ray 3 in person? 4 A. Um-hmm. 5 Q. Was there anyone on the telephone? 6 A. No. 7 Q. Okay. Did you review any documents at 8 the meeting? 9 A. No. 10 Q. Okay. Other than the meeting yesterday, 11 did you talk to anyone else about this deposition? 12 A. That I would be at the deposition, yes. 13 Q. Okay. You told people you work with -- 14 A. My supervisor -- 15 Q. Okay. 16 A. -- my husband. 17 Q. Okay. Did you talk with anyone about 18 the substance of the deposition? 19 A. My boss, my supervisor I mean -- 20 Q. Who is your supervisor? 21 A. Kevin Gorospe. 22 Q. Okay. And when did you speak to Mr.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Gorospe about the deposition?</p> <p>2 A. Yesterday, in the context that I would</p> <p>3 be here, but --</p> <p>4 Q. Okay. But did you talk about what you</p> <p>5 were -- the testimony that you -- the substance of</p> <p>6 the testimony you were going to give today?</p> <p>7 A. No.</p> <p>8 Q. No.</p> <p>9 A. And then I would have talked to my</p> <p>10 husband about the fact that I was going to be here</p> <p>11 today.</p> <p>12 Q. Okay. Did you review any of the other</p> <p>13 depositions, any transcripts of the other</p> <p>14 depositions that have been taken in this action?</p> <p>15 A. No.</p> <p>16 Q. Okay. You mentioned Kevin Gorospe is</p> <p>17 your supervisor. Have you talked to him about</p> <p>18 this case at all?</p> <p>19 A. Not recently, but, yes, since the case</p> <p>20 began. Yes.</p> <p>21 Q. Okay. And what about the case did you</p> <p>22 discuss with Mr. Gorospe?</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Um-hmm.</p> <p>2 Q. Do you know approximately when you</p> <p>3 worked on preparing those responses?</p> <p>4 A. I don't recall the exact time or the</p> <p>5 date, month, but it seems to me that this process</p> <p>6 started sometime in 2007.</p> <p>7 Q. Okay. Maybe, if I could help you out,</p> <p>8 maybe around December, November of 2007?</p> <p>9 A. I don't know.</p> <p>10 Q. Okay.</p> <p>11 A. It could be. I don't know.</p> <p>12 Q. Can't say for certain?</p> <p>13 A. No.</p> <p>14 Q. Okay. Apart from Mr. Gorospe, have you</p> <p>15 had discussions with anyone else about this</p> <p>16 lawsuit?</p> <p>17 A. Janet Alexander.</p> <p>18 Q. Okay. She is counsel for the Department</p> <p>19 of Health Services?</p> <p>20 A. Correct.</p> <p>21 Q. It's the Department of Health Care</p> <p>22 Services; right?</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Basically, the nature of the case, that</p> <p>2 it was a lawsuit that involved manufacturers.</p> <p>3 Q. Okay.</p> <p>4 A. Nothing beyond what would have been</p> <p>5 typical of an interaction with any other work-</p> <p>6 related subject.</p> <p>7 Q. Okay. Maybe Mr. Gorospe just mentioned</p> <p>8 there was this lawsuit and it was against drug</p> <p>9 manufacturers? Is that it?</p> <p>10 A. I was involved with portions of the</p> <p>11 lawsuit in the beginning, for example with</p> <p>12 document collection and some of the rogs</p> <p>13 responding to those.</p> <p>14 Q. Okay.</p> <p>15 A. And the redactions. So to the extent</p> <p>16 that I needed clarification on how to respond</p> <p>17 appropriately to any of those activities, then I</p> <p>18 would have had conversations with Kevin --</p> <p>19 Q. Okay.</p> <p>20 A. -- accordingly.</p> <p>21 Q. Okay. You had mentioned that you had</p> <p>22 worked on preparing responses to interrogatories?</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Correct.</p> <p>2 Q. Today.</p> <p>3 But it used to be known as the</p> <p>4 Department of Health Services; right?</p> <p>5 A. Correct.</p> <p>6 Q. If I use those two terms interchangeably</p> <p>7 today, can we understand that I'm referring to the</p> <p>8 Department of Health Care Services, which used to</p> <p>9 be known as the Department of Health Services?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. You spoke with Ms. Alexander?</p> <p>12 A. Um-hmm.</p> <p>13 Q. When did that conversation take place?</p> <p>14 A. It would not have been a single</p> <p>15 conversation, but multiple conversations, again</p> <p>16 associated with --</p> <p>17 MR. GLASER: I'm going to object and I'm</p> <p>18 going to advise the deponent not to discuss any</p> <p>19 conversations that you had.</p> <p>20 You can answer questions about when.</p> <p>21 THE WITNESS: Okay.</p> <p>22 MR. GLASER: But I would ask you not to</p>

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<p>1 respond to any questions that ask you to describe 2 the contents of conversations. 3 Ms. Alexander is an attorney with the -- 4 MR. CYR: Right, right, right. 5 Q. Would you have spoken to Ms. Alexander 6 about this lawsuit more than once? 7 A. Yes. 8 Q. Do you remember -- can you say 9 approximately how many times you've spoken with 10 her? 11 A. No. I don't recall. 12 Q. More than 10 times? 13 A. Can't recall. 14 Q. Okay. Have you spoken to anyone else 15 about this lawsuit? 16 A. Randy Glaser, John Fisher. 17 Q. And you mentioned Mr. Glaser. You've 18 spoken to him outside -- at another time besides 19 the meeting you had with him yesterday? 20 A. Correct. 21 Q. Okay. How many times have you spoken 22 with Mr. Glaser about the lawsuit?</p>	<p>1 University of the Pacific for my Doctor of 2 Pharmacy. 3 Q. So you received a Doctor of Pharmacy 4 from the university? 5 A. School of Pharmacy. 6 Q. School of Pharmacy. 7 And did you receive a bachelor's degree 8 from the University of the Pacific? 9 A. No. 10 Q. Just the doctorate? 11 A. Um-hmm. 12 Q. Do you have a bachelor's degree? 13 A. No. 14 Q. Okay. Did you receive any degree from 15 the junior college? 16 A. Associate -- the A.A. degree. 17 Q. Since you received your doctorate in 18 pharmacy, have you taken any courses or any 19 additional training? 20 A. For licensure, continuing licensure we 21 are required -- the State Board of Pharmacy 22 requires that we complete 30 -- a minimum of 30</p>
Page 27	Page 29
<p>1 A. I don't recall. 2 Q. Okay. And do you remember how many 3 times you've spoken with Mr. Fisher about the 4 lawsuit? 5 A. No. 6 Q. Okay. I'd like to change gears now. 7 Could you describe your educational 8 background since high school. 9 A. Junior college with a major in -- I 10 think it was Life Sciences. But the focus was to 11 transfer to a four-year college. 12 And then -- 13 Q. Can I just interrupt you there? What 14 was the name of the junior college? 15 A. San Joaquin Delta College. 16 Q. Okay. And then from there? 17 A. University of Pacific, College of the 18 Pacific. 19 And that was to finish up some pre- 20 pharmacy requirements to be accepted into the 21 Doctor of Pharmacy program. 22 Then the School of Pharmacy at the</p>	<p>1 continuing education hours between licensing 2 periods, so every two years. So in order to meet 3 those requirements, I've participated in 4 continuing education courses. 5 Q. Okay. Let me back up. 6 When did you receive your Doctorate of 7 Pharmacy? 8 A. 1982. 9 Q. 1982? 10 And I take it because you're required to 11 take the continuing education classes you're a 12 registered pharmacist. 13 A. Correct. 14 Q. Okay. And when did you become a 15 registered pharmacist? 16 A. 1982. 17 Q. Okay. And so you've been doing those 18 continuing education classes every year since 19 then? 20 A. Um-hmm. 21 Q. On a two-year cycle? 22 A. Yes.</p>

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<p style="text-align: right;">Page 30</p> <p>1 Q. Okay. Have you taken any other classes</p> <p>2 since graduating, apart from the continuing</p> <p>3 education classes?</p> <p>4 A. Are you referring to classes associated</p> <p>5 with a college or are you referring to classes in</p> <p>6 general? I don't know what you mean by "classes."</p> <p>7 Q. Let's start with classes associated with</p> <p>8 the college.</p> <p>9 A. I've gone back and taken fitness</p> <p>10 classes.</p> <p>11 Q. Okay. Well, anything -- let me make it</p> <p>12 a little simpler. Anything related to pharmacy?</p> <p>13 A. No.</p> <p>14 Q. No. Okay.</p> <p>15 Any classes -- vocational-type classes</p> <p>16 related to your job at DHS or DHCS?</p> <p>17 A. At a college?</p> <p>18 Q. At a college.</p> <p>19 A. No.</p> <p>20 Q. I assume you've probably had some on-</p> <p>21 the-job training.</p> <p>22 A. Correct.</p>	<p style="text-align: right;">Page 32</p> <p>1 A. As often as I need to.</p> <p>2 Q. Okay. What are some of those programs?</p> <p>3 A. One of the programs is called LiveLink.</p> <p>4 Q. Okay. And what is LiveLink?</p> <p>5 A. I don't know the full extent of</p> <p>6 LiveLink's capabilities.</p> <p>7 Q. Okay.</p> <p>8 A. But for what I use it for is to access</p> <p>9 historical documents. It's electronic storage of</p> <p>10 documents, specifically provider bulletins or</p> <p>11 Operating Instruction Letters or OILs.</p> <p>12 Q. And the provider bulletins and the OILs,</p> <p>13 those are documents that are prepared by DHS; is</p> <p>14 that correct?</p> <p>15 A. The OIL would be prepared by the</p> <p>16 Department or DHS, DHCS.</p> <p>17 And I'll use "Department" to mean</p> <p>18 Department of Health Care Services or Department</p> <p>19 of Health Services.</p> <p>20 Q. Absolutely. That's fine.</p> <p>21 A. That's typically how I refer to the</p> <p>22 organization that I work for.</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Okay. What was the nature of that</p> <p>2 training?</p> <p>3 A. Every year or so we have a class that's</p> <p>4 on legislative training, how to do a bill</p> <p>5 analysis.</p> <p>6 Q. Okay.</p> <p>7 A. Classes on management, classes on how to</p> <p>8 work with various computer programs, how to work</p> <p>9 with -- classes on how to work with programs that</p> <p>10 have been specifically designed for use by the</p> <p>11 Department.</p> <p>12 Q. Okay. Are there any programs -- the</p> <p>13 last category of classes that you mentioned,</p> <p>14 dealing with computer programs specifically</p> <p>15 designed for the Department, are there any</p> <p>16 computer programs that you use that were designed</p> <p>17 specifically for the Department on a regular</p> <p>18 basis?</p> <p>19 A. Not knowing what you mean by "regular,"</p> <p>20 there are programs that have been designed for the</p> <p>21 Department that I access periodically.</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Okay.</p> <p>2 A. The bulletin articles are prepared by</p> <p>3 the fiscal intermediary and sent to the Department</p> <p>4 for review and final approval before distribution</p> <p>5 to the provider community.</p> <p>6 Q. Okay. You mentioned a term in there,</p> <p>7 "the fiscal intermediary."</p> <p>8 A. Um-hmm.</p> <p>9 Q. What is the fiscal intermediary?</p> <p>10 A. The function of the fiscal intermediary</p> <p>11 --</p> <p>12 Q. Oh, the function -- yes, the function of</p> <p>13 the fiscal intermediary. I'm sorry.</p> <p>14 A. -- is to process our claims that are</p> <p>15 submitted to the Department by providers and to</p> <p>16 prepare provider bulletins that are sent to the</p> <p>17 provider community, of course upon our</p> <p>18 instruction, that notify providers of changes but</p> <p>19 at the same time notify the fiscal intermediary of</p> <p>20 updates or changes that need to be made to the</p> <p>21 system, the claims processing system --</p> <p>22 Q. Okay.</p>

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<p>1 A. -- in order to facilitate billing needs.</p> <p>2 Q. Okay.</p> <p>3 A. Beyond that, I don't know what their</p> <p>4 function is.</p> <p>5 Q. Okay. And currently who is the</p> <p>6 Department's -- or the fiscal intermediary works</p> <p>7 primarily for the Medi-Cal program; is that</p> <p>8 correct?</p> <p>9 A. I don't know if that is correct. I know</p> <p>10 that they do work for us, but I don't know if they</p> <p>11 work for other departments that have claims to</p> <p>12 process.</p> <p>13 Q. Okay. Who is the fiscal intermediary</p> <p>14 currently?</p> <p>15 A. EDS.</p> <p>16 Q. EDS? Is that Electronic Data Systems?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Since you've been at the</p> <p>19 Department, has it always been Electronic Data</p> <p>20 Systems?</p> <p>21 A. As far as I know, yes.</p> <p>22 Q. Okay. You mentioned LiveLink and you</p>	<p>1 question.</p> <p>2 Why do you access -- what reasons do you</p> <p>3 have to access the RAIS system?</p> <p>4 A. Rarely now do I access it. But when I</p> <p>5 do access it, it's to look up pricing information.</p> <p>6 Q. Is that pricing information for drugs?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And what type of pricing</p> <p>9 information do you look at on the RAIS system?</p> <p>10 A. It's been such a long time since I've</p> <p>11 had need to look at that system --</p> <p>12 Q. Okay.</p> <p>13 A. -- because that's not part of what my</p> <p>14 primary job is today.</p> <p>15 Q. Okay.</p> <p>16 A. So when I looked at RAIS more routinely,</p> <p>17 I would look for rebate information.</p> <p>18 Q. What type of rebate information</p> <p>19 specifically?</p> <p>20 A. Supplemental rebate and CMS or HCFA</p> <p>21 Rebate.</p> <p>22 Q. Any other computer programs designed</p>
Page 35	Page 37
<p>1 use that to access historical documents and you</p> <p>2 mentioned the provider bulletins and the OILs.</p> <p>3 Are there any other types of documents</p> <p>4 you look at on LiveLink?</p> <p>5 A. No.</p> <p>6 Q. Okay. You don't access any documents</p> <p>7 that might have been prepared by a manufacturer</p> <p>8 and sent to the program?</p> <p>9 A. I don't know that they're stored there.</p> <p>10 No.</p> <p>11 Q. Okay. Would they be stored -- would</p> <p>12 documents like that be stored somewhere else?</p> <p>13 A. I don't know.</p> <p>14 Q. Okay. Are there other computer programs</p> <p>15 that you use?</p> <p>16 A. Computer programs that have been --</p> <p>17 Q. Set up specifically for DHS.</p> <p>18 A. On occasion I will access our RAIS</p> <p>19 system.</p> <p>20 Q. Okay. And what is the RAIS system?</p> <p>21 A. It's --</p> <p>22 Q. Strike that. Let me ask a better</p>	<p>1 specifically for DHS that you use during the</p> <p>2 course of your work?</p> <p>3 A. No.</p> <p>4 Q. Okay. Do you subscribe to any</p> <p>5 publications? Well, strike that.</p> <p>6 Do you subscribe to any trade</p> <p>7 publications?</p> <p>8 A. There are some online publications that</p> <p>9 are free that I subscribe to. But no hard copy.</p> <p>10 Q. No hard copy?</p> <p>11 What are the online publications?</p> <p>12 A. You know, I don't know the names of</p> <p>13 them. I just know that -- I think there's like</p> <p>14 California Health Line or -- it's just a</p> <p>15 newsletter that pops up daily.</p> <p>16 Q. Do you receive that via e-mail?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And what kind of information is</p> <p>19 in that?</p> <p>20 A. It's anything that has to do with things</p> <p>21 going on in the State of California. So, for</p> <p>22 example, there would be information there on</p>

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<p>1 proposed cuts to the Medi-Cal program or some 2 national trends or things that are going on with 3 healthcare, healthcare reform, those kinds of 4 informational types of articles. 5 Q. Okay. Any other online publications? 6 A. Kaiser Foundation -- 7 Q. Okay. 8 A. -- puts out a publication that I'll look 9 at. 10 Q. What kind of information is in the 11 Kaiser Foundation? 12 A. There's somewhat the same information, 13 but at times there are more reports because Kaiser 14 Foundation itself does reports or studies on 15 different issues, so there will be that kind of 16 information in the Kaiser reports. 17 Kaiser does one also that's HIV 18 specific, HIV-AIDS, things that are going on in 19 the United States and worldwide as related to HIV. 20 Q. Okay. Any other publications? 21 A. There's a publication called -- I think 22 it's called Pharmsource, and it might have</p>	<p>1 American Pharmacy Association -- or American 2 Pharmacists Association has expired. 3 Q. Okay. But you were a member at one 4 point of the American Pharmacists Association? 5 A. Yes. 6 Q. Okay. When were you a member of the 7 American Pharmacists Association? 8 A. Last year. 9 Q. Okay. Just last year or... 10 A. I don't know the renewal period. 11 Q. Oh, okay. 12 A. But when the renewal notice came, I 13 didn't renew. 14 Q. Okay. When did you join the American 15 Pharmacists Association? 16 A. It probably would have been in 2008. 17 Q. Okay. So only for about a year; right? 18 A. Yes. 19 The membership comes with attendance at 20 their annual meeting -- 21 Q. Oh, okay. 22 A. -- which is a national meeting during</p>
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<p>1 articles that are related to practice trends, like 2 in different pharmacy practice settings or new 3 drugs or new indications for existing drugs, just 4 anything that's related to the activity of 5 dispensing a drug in various settings or drug- 6 related issues, if there's a -- one of the things 7 that just popped into my head was like when there 8 was an issue with deaths associated with the wrong 9 drug concentration being in an IV. 10 Q. Okay. 11 A. Those kinds of things. 12 Q. So is it a publication targeted at the 13 pharmacy industry? 14 A. Targeted at pharmacists. 15 Q. Pharmacists. Okay. 16 You had mentioned before that you're a 17 registered pharmacist. Do you have any other 18 professional licenses? 19 A. No. 20 Q. Okay. Are you a member of any 21 professional associations or organizations? 22 A. No. I think my membership to the</p>	<p>1 which we're able to get continuing education 2 hours. 3 Q. And that's why you became a member? 4 A. Correct. 5 Q. Okay. Have you ever been a member of 6 the California Pharmacists Association? 7 A. Yes. 8 Q. When were you a member of that? 9 A. I don't know. I may have been a member 10 as a student and then intermittently since 1982, 11 but I don't believe anytime recently. 12 Q. Okay. Anytime recently within the past 13 five years? 14 A. Correct. 15 Q. Within the past 10 years? 16 A. I don't know. 17 Q. Okay. Any other professional 18 associations? 19 A. At one point in time I was a member of 20 the California Hospital Society of -- CSH -- 21 California Society of Hospital Pharmacists. That 22 was the name of it then. And I think it's been</p>

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<p>1 renamed to California Society of Health Systems 2 Pharmacists. 3 Q. And you say you were a member of that at 4 one point in time? 5 A. Um-hmm. Yes. 6 Q. But no longer? 7 A. Correct. 8 Q. Okay. Do you remember approximately 9 when you were a member? 10 A. Probably in the 1980s. 11 Q. But not in the 1990s? 12 A. Probably not. 13 Q. Okay. Have you ever written an article 14 for publication? 15 A. Publication where? 16 Q. In a trade journal or a newsletter. 17 A. I wrote an article one time for a 18 publication in the California Pharmacists 19 Association's journal, CPHA. 20 Q. And what was that article about? 21 A. It had to do with Pharmacist 22 Intervention programs. It would have been around</p>	<p>1 Q. Okay. So the pharmacist essentially 2 being more than just a pharmacist, maybe giving -- 3 or not more than just a pharmacist, but more than 4 just dispensing drugs; giving the patient some 5 medical advice and guidance? 6 A. Not medical advice, because as a 7 pharmacist your license doesn't give you that -- 8 it's not a license that gives you that authority 9 to give medical advice. 10 You can give medical information -- 11 Q. Okay. 12 A. -- you can provide patient education, 13 you can provide them drug information and refer 14 them back to their physician or advise them to 15 seek additional evaluation from other members of 16 their healthcare team -- 17 Q. Okay. 18 A. -- as appropriate. 19 Q. Okay. Have you written any other 20 articles for publication? 21 A. No. 22 Q. And you're presently employed by the</p>
Page 43	Page 45
<p>1 the time that the Department was collaborating 2 with CPHA to do a study to determine the cost- 3 effectiveness of paying pharmacists for specific 4 intervention activities and assessing the impact 5 on quality of life and overall healthcare costs 6 for patients with specific diagnoses. 7 Q. What do you mean by "intervention 8 activities"? 9 A. Today the buzzword -- or the term that's 10 used is MTM, or Medication Therapy Management. 11 Back then the term was Cognitive 12 Services, also Pharmaceutical Intervention. The 13 term that we -- the Department or our pharmacy 14 unit decided to use was Pharmacist Intervention. 15 Q. Okay. 16 A. And the intervention was related to 17 aspects of care that had nothing to do with 18 dispensing the product, so it would have centered 19 on patient education around their medication as 20 well as their disease so that the patient or 21 beneficiary could be empowered to better manage 22 their disease and have improved outcomes.</p>	<p>1 Department; is that correct? 2 A. Correct. 3 Q. Okay. Where did you work prior to 4 working for the Department? 5 A. I worked for the Department of 6 Developmental Services at the Stockton 7 Developmental Center. 8 Q. And what time period did you work there? 9 A. I worked for Developmental Services from 10 1985 until I believe it was 1991. 11 Q. And what was the title of the position 12 you held there? 13 A. Pharmacist I. 14 Q. And what were your responsibilities 15 there? 16 A. I was part of an interdisciplinary team, 17 and the facility was a long-term care facility 18 that housed clients with developmental 19 disabilities and many of whom also had mental 20 illness, so dually diagnosed. I had a patient 21 load, I had a skilled nursing unit, and then 22 another unit that was more behavior, and I would</p>

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<p style="text-align: right;">Page 46</p> <p>1 review their charts --</p> <p>2 Q. I'm sorry. You would review the</p> <p>3 clients' charts?</p> <p>4 A. Correct.</p> <p>5 Q. Okay.</p> <p>6 A. And I would identify problems that might</p> <p>7 be drug related and, when necessary, send notes to</p> <p>8 whoever their physician was with recommendations</p> <p>9 for change or if they needed lab work.</p> <p>10 Also worked with the staff who were</p> <p>11 administering the medications. We would have to</p> <p>12 monitor them for appropriate administration of</p> <p>13 medications and documentation.</p> <p>14 Q. Okay.</p> <p>15 A. And then the dispensing function.</p> <p>16 I was a member of the Therapeutic Review</p> <p>17 Committee.</p> <p>18 I would prepare drug histories and just</p> <p>19 participate in annual and semiannual meetings for</p> <p>20 the beneficiaries assigned to me or clients</p> <p>21 assigned to me as the team made up their plan.</p> <p>22 Q. Okay. You said you were involved in</p>	<p style="text-align: right;">Page 48</p> <p>1 product and then unit-dose it for use within the</p> <p>2 Developmental Services system for all the</p> <p>3 developmental centers.</p> <p>4 And I think there may have been drugs</p> <p>5 that we would secure from time to time that were</p> <p>6 on the Department of General Services contract.</p> <p>7 Q. You had mentioned -- first you had</p> <p>8 mentioned that sometimes you would order drugs</p> <p>9 directly from a wholesaler?</p> <p>10 A. Correct.</p> <p>11 Q. Do you remember which wholesaler?</p> <p>12 A. I think the wholesaler that we used was</p> <p>13 Valley Wholesale.</p> <p>14 Q. Valley Wholesale?</p> <p>15 A. In Stockton.</p> <p>16 Q. You had also said that most of the drugs</p> <p>17 -- I think I had this -- correct me if I'm wrong -</p> <p>18 - most of the drugs were -- you acquired from --</p> <p>19 was it Central Fairfield?</p> <p>20 A. It was Fairview Developmental Center.</p> <p>21 Q. Okay. Fairview Developmental Center?</p> <p>22 A. I think it was Fairview. It may have</p>
<p style="text-align: right;">Page 47</p> <p>1 dispensing drugs at the Department of</p> <p>2 Developmental Services. Is it the Department of</p> <p>3 Developmental Services?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. Did you know at the time how the</p> <p>6 Department acquired the drugs that you dispensed?</p> <p>7 A. Yes, because we would have to order</p> <p>8 them.</p> <p>9 Q. Okay.</p> <p>10 A. The pharmacy.</p> <p>11 Q. Okay. Were you involved in ordering</p> <p>12 drugs?</p> <p>13 A. From time to time.</p> <p>14 Q. How would that process work?</p> <p>15 A. I would make a list of what we were</p> <p>16 running out of in the pharmacy, and if we had to</p> <p>17 short-order, we would short-order from the</p> <p>18 wholesaler.</p> <p>19 If it were something that our central</p> <p>20 packer -- we had I think it was Fairview</p> <p>21 Developmental Center that had like a central</p> <p>22 prepacking operation where they would take bulk</p>	<p style="text-align: right;">Page 49</p> <p>1 been Lanterman. It's wherever Rick Shasha worked.</p> <p>2 That's what I recall. He was the pharmacist that</p> <p>3 was kind of managing -- he may have worked for</p> <p>4 Lanterman. It's one of the two.</p> <p>5 Q. Okay. And you said that they did --</p> <p>6 they would package unit dose?</p> <p>7 A. Some.</p> <p>8 Q. Okay. Is that primarily what you had</p> <p>9 ordered from them, things that had been repackaged</p> <p>10 into a unit-dose form?</p> <p>11 A. I believe so.</p> <p>12 Q. Okay.</p> <p>13 A. And then we did our own prepacking too</p> <p>14 as well. So I don't -- I think the technicians --</p> <p>15 we had pharmacy technicians that worked in the</p> <p>16 pharmacy, and what we as a pharmacist would do</p> <p>17 would be to write down -- you always have a book</p> <p>18 of what you need, and then decisions. We might</p> <p>19 decide do we have time to wait for it to come from</p> <p>20 Lanterman or do we get it off the DGS contract or</p> <p>21 is it something that we need tomorrow, in which</p> <p>22 case we might order it from the wholesaler. But</p>

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<p style="text-align: right;">Page 50</p> <p>1 usually the drugs that we ordered from the</p> <p>2 wholesaler were the minority.</p> <p>3 Q. Okay. Fairview Development Center -- or</p> <p>4 Lanterman's -- one of those two. I guess you</p> <p>5 don't remember which one it was exactly.</p> <p>6 A. I just remember it's Rick Shasha.</p> <p>7 Q. Rick Shasha? Okay.</p> <p>8 Where Rick worked, was that a private</p> <p>9 business or was that something that was run by</p> <p>10 California?</p> <p>11 A. It was part of the Department of</p> <p>12 Developmental Services.</p> <p>13 Q. Okay.</p> <p>14 A. It was a facility not -- well, it was a</p> <p>15 facility much like the Stockton Developmental</p> <p>16 Center, except that the Stockton Developmental</p> <p>17 Center had more dually diagnosed individuals than</p> <p>18 say like Fairview or Lanterman would have had.</p> <p>19 Q. Okay. Do you know how Fairview or</p> <p>20 Lanterman, how they acquired the drugs that they</p> <p>21 would pass on to you?</p> <p>22 A. No.</p>	<p style="text-align: right;">Page 52</p> <p>1 source --</p> <p>2 Q. Okay.</p> <p>3 A. And then write the drug down on the</p> <p>4 appropriate log for someone else to place the</p> <p>5 order.</p> <p>6 Q. So whether a drug came from the DGS</p> <p>7 contract or from Fairview or Lanterman, that was</p> <p>8 based on the type of drug, essentially; right?</p> <p>9 Certain drugs you got from the DGS contract and</p> <p>10 certain drugs -- other drugs you got from</p> <p>11 Lanterman; is that correct?</p> <p>12 A. I'm not sure what the basis of how the</p> <p>13 decision -- you know, if it was -- I don't recall.</p> <p>14 I would only be guessing.</p> <p>15 Q. Okay.</p> <p>16 A. And I don't want to guess.</p> <p>17 Q. Okay. And I don't want you to guess.</p> <p>18 You had mentioned that you started</p> <p>19 working for the Department of Developmental</p> <p>20 Services in 1985.</p> <p>21 A. Um-hmm.</p> <p>22 Q. Is that correct?</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Okay. When you would order drugs from a</p> <p>2 wholesaler, did you ever look at the prices for</p> <p>3 the drugs that you were ordering?</p> <p>4 A. No.</p> <p>5 Q. No.</p> <p>6 Do you know who was responsible for</p> <p>7 that?</p> <p>8 A. No.</p> <p>9 Q. Okay. You also mentioned that you would</p> <p>10 order drugs off a Department of General Services</p> <p>11 contract?</p> <p>12 A. Yes.</p> <p>13 Q. How would that process work?</p> <p>14 A. I don't know.</p> <p>15 Q. Well, how would you order drugs?</p> <p>16 A. I would put it on the list of here's</p> <p>17 what we need, and the technician or somebody else</p> <p>18 would actually go through the process of placing</p> <p>19 that order.</p> <p>20 Q. Okay.</p> <p>21 A. I might look to see what is on the DGS</p> <p>22 contract, do we get this from DGS, who is our</p>	<p style="text-align: right;">Page 53</p> <p>1 A. Yes, thereabouts.</p> <p>2 Q. What did you do before then?</p> <p>3 A. I worked for Doctors Medical Center in</p> <p>4 Modesto.</p> <p>5 MR. GLASER: Brandon, when you get an</p> <p>6 opportunity, when you finish up this line of</p> <p>7 questioning, think we might take a break? As soon</p> <p>8 as you're ready. I don't want to interrupt your</p> <p>9 questioning, but it's been about an hour or so.</p> <p>10 MR. CYR: Okay.</p> <p>11 Q. What were your -- was it Doctors Medical</p> <p>12 Center in Modesto?</p> <p>13 A. Correct.</p> <p>14 Q. What were your responsibilities there?</p> <p>15 A. It was an acute care center, so it would</p> <p>16 have been again reviewing physicians' orders as</p> <p>17 they came down, entering the information -- the</p> <p>18 patient-specific information or the order into our</p> <p>19 system, and then at a designated time work on</p> <p>20 filling the unit dose cassettes for administration</p> <p>21 -- or delivery and administration by the nursing</p> <p>22 staff.</p>

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1 Q. Okay.

2 A. For each patient. So we would have to

3 review the orders. If the card exchange hadn't

4 occurred, we would have to add medications to the

5 individual's cassette or remove medications,

6 however the order had changed.

7 And then also part of the job was to

8 prepare IVs.

9 Q. Okay. Would it be accurate to describe

10 it as kind of like an in-house pharmacy?

11 A. Yes.

12 Q. Okay. And did you have a job from the

13 time that you graduated from the School of

14 Pharmacy?

15 A. I had one other job prior and it was

16 working -- but it was only for a few months -- it

17 was working for an HMO-type pharmacy. So in that

18 respect, it was closed to the general public, only

19 open to members of that health maintenance

20 organization. And I don't recall the name of the

21 organization. It was during the time when HMOs

22 were relatively new, the concept was new.

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1 Q. Okay. And at either of those jobs, the

2 Doctors Medical Center or the HMO where you worked

3 before then, were you involved in ordering drugs

4 from a wholesaler or manufacturer?

5 A. Again the same process as at the

6 Developmental Center. When we appeared short --

7 and I'm speaking of the acute care hospital now.

8 Q. Okay.

9 A. When inventory was low on a particular

10 product, we had a designated area that we would

11 write items in and then the technician would take

12 care of ordering it --

13 Q. Okay.

14 A. -- the next day.

15 In the HMO setting, it was pretty much

16 the same thing.

17 Q. Okay. And you weren't -- you didn't

18 look at prices or price lists or --

19 A. No.

20 Q. Okay. And you weren't involved in

21 paying for those drugs when you ordered them?

22 A. No.

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1 Q. Okay. At the Doctors Medical Center,

2 did you ever submit claims for reimbursement from

3 a third-party payer?

4 A. No.

5 Q. Okay. And at the HMO pharmacy?

6 A. The HMO is the third party, so we just

7 collected the copay.

8 Q. Okay. And you said you left the

9 Department of Developmental Services around 1991;

10 is that correct?

11 A. Correct.

12 Q. And where did you go from there?

13 A. I went from there to the Department of

14 Health Services, to their field office.

15 MR. CYR: I think this might be a good

16 place to take a break.

17 THE VIDEOGRAPHER: We are now going off

18 the video record approximately 10:15.

19 We're back on the video record at

20 approximately 10:29.

21 MR. CYR: Q. Ms. Ahrens, before the

22 break we were talking about you had started, I

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1 think, working at the Department of Health

2 Services in 1991; is that correct?

3 A. I believe so.

4 Q. And you mentioned you were in a field

5 office?

6 A. Correct.

7 Q. What was the field office?

8 A. The Stockton Drug Unit.

9 Q. Stockton Drug Unit.

10 And what was your title?

11 A. Pharmaceutical Consultant I.

12 Q. And what were your responsibilities?

13 A. Adjudication of treatment authorization

14 requests for drugs.

15 Q. And what did adjudication of treatment

16 authorization requests entail?

17 A. Looking at the drug that was being

18 requested and the diagnosis or its intended use,

19 the medical justification for that drug.

20 Q. And, I'm sorry, this is in the context

21 of the Medi-Cal program?

22 A. Correct.

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<p>1 Q. And just so the record is clear, the</p> <p>2 Medi-Cal program is California's Medicaid program?</p> <p>3 A. Correct.</p> <p>4 Q. And when would it be necessary to go</p> <p>5 through the -- to adjudicate a treatment</p> <p>6 authorization?</p> <p>7 A. Whenever a pharmacy provider sent in a</p> <p>8 request for payment of a drug on behalf of a</p> <p>9 beneficiary.</p> <p>10 Q. Okay. So is it like processing a claim?</p> <p>11 A. No.</p> <p>12 Q. No?</p> <p>13 Does this process happen whenever a</p> <p>14 pharmacist submits a claim for reimbursement?</p> <p>15 A. No.</p> <p>16 Q. No?</p> <p>17 What triggers the adjudication process?</p> <p>18 A. Whenever the provider submits a TAR, or</p> <p>19 a Treatment Authorization Request.</p> <p>20 Q. When is it necessary for a Medi-Cal</p> <p>21 provider to submit a TAR?</p> <p>22 A. It is necessary whenever -- as far as</p>	<p>1 Q. Okay. But you have some knowledge of</p> <p>2 that today; right?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. We'll get to that in a little</p> <p>5 bit.</p> <p>6 What would the adjudication process --</p> <p>7 well, actually, strike that.</p> <p>8 It seems like there are two terms you</p> <p>9 kind of use interchangeably, a "Treatment</p> <p>10 Authorization Request" and "prior authorization."</p> <p>11 Is that accurate or...</p> <p>12 A. The Treatment Authorization -- when I</p> <p>13 say Treatment Authorization Request, it's in</p> <p>14 reference to the form --</p> <p>15 Q. Okay.</p> <p>16 A. -- that providers would submit to Medi-</p> <p>17 Cal.</p> <p>18 Q. Okay. And the process is called prior</p> <p>19 authorization?</p> <p>20 A. I don't know if I would say process is</p> <p>21 called prior authorization.</p> <p>22 Q. Okay.</p>
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<p>1 drugs go, whenever the drug is available only</p> <p>2 through prior authorization.</p> <p>3 Q. Okay. And so if prior authorization</p> <p>4 wasn't required for a drug, this process wouldn't</p> <p>5 happen?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Why is it necessary for -- strike</p> <p>8 that.</p> <p>9 How is it determined whether the prior</p> <p>10 authorization is necessary for a drug?</p> <p>11 A. Medi-Cal has a list of drugs that are</p> <p>12 available without prior approval. So anything not</p> <p>13 on that list would be subject to prior approval.</p> <p>14 Q. Okay. And how does a drug get on that</p> <p>15 list for which a prior authorization is not</p> <p>16 necessary?</p> <p>17 A. Now?</p> <p>18 Q. Actually, at the time you were working</p> <p>19 at the Stockton Drug Unit.</p> <p>20 A. At the time that I was working at the</p> <p>21 Drug Unit, I had no knowledge of how the drugs got</p> <p>22 on the list.</p>	<p>1 A. I don't -- it's not the process.</p> <p>2 Q. Could you talk a little bit about the --</p> <p>3 or strike that.</p> <p>4 Could you describe the adjudication</p> <p>5 process once a Treatment Authorization Request is</p> <p>6 submitted.</p> <p>7 A. I can describe the process once it hits</p> <p>8 a pharmacist's desk or once it would hit my desk,</p> <p>9 but not what happened before or after it left my</p> <p>10 desk.</p> <p>11 Q. Okay. Let's start once it hits -- when</p> <p>12 you say the pharmacist's desk, you mean a</p> <p>13 pharmacist at the Department?</p> <p>14 A. A pharmacist at the Drug Unit.</p> <p>15 Q. Okay. Describe for me what happens once</p> <p>16 it hits the pharmacist's desk at the Drug Unit.</p> <p>17 A. Then, when I worked at the Drug Unit?</p> <p>18 Q. Um-hmm.</p> <p>19 A. The TAR would key in a number that was</p> <p>20 assigned to the TAR --</p> <p>21 Q. Okay.</p> <p>22 A. I think it was a document control</p>

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<p style="text-align: right;">Page 62</p> <p>1 number. And then that would pull up the patient's 2 history, their TAR history, and other information 3 about the beneficiary or patient -- 4 Q. Okay. 5 A. -- that I or that a consultant would use 6 to assist in determining the outcome of the TAR, 7 of the adjudication. 8 And so the information in the history 9 would be reviewed as well as information that the 10 provider would submit on the TAR. 11 Q. What type of information would the 12 provider submit with the TAR? 13 A. It has to be medical justification that 14 substantiates the need for that particular item or 15 drug that's being requested. 16 Q. By "medical justification," do you mean 17 some sort of evidence that the drug was medically 18 necessary for the beneficiary? 19 A. Yes. 20 Q. Okay. Would it be sometimes like a 21 statement from a doctor or something like that? 22 A. On occasion a doctor would submit the</p>	<p style="text-align: right;">Page 64</p> <p>1 indication was for the drug for both labeled and 2 unlabeled drug use. 3 Q. Okay. How would you decide whether or 4 not to grant a TAR? 5 A. Well, the decision would be based on 6 whether or not enough medical justification was 7 submitted with the TAR to substantiate the need. 8 Q. Okay. Just to clarify that point, 9 medical justification, I'm assuming that includes 10 a statement from the pharmacist that the drug was 11 medically necessary and, based on some of the 12 other things you've told us, maybe looking at the 13 patient's history to see whether other drugs that 14 -- other drugs where no prior authorization was 15 required had been tried and didn't work out or 16 weren't available for that treatment. Is that 17 correct? 18 A. Partially correct. 19 Q. Okay. 20 A. A statement that a drug is medically 21 necessary from a provider is not medical 22 justification, that's an opinion.</p>
<p style="text-align: right;">Page 63</p> <p>1 TAR, but typically the TARs came from the pharmacy 2 provider -- 3 Q. Okay. 4 A. -- and so... 5 Q. So the pharmacy provider would be 6 submitting the justification -- I guess providing 7 the reasons why the drug was medically necessary? 8 A. Um-hmm. 9 Q. Okay. Any other information you looked 10 at when you were considering a TAR? 11 A. We would look at other drugs that were 12 available on the Medi-Cal list that might be used 13 to treat the same condition. 14 Q. Okay. 15 A. And look in the history to see if there 16 was evidence of that drug having been tried or 17 ruled out, as well as whether or not the provider 18 submitted information that stated such. 19 Q. Okay. Any other information that you 20 would consider? 21 A. We would always have to look at the 22 indication for -- you know, what the published</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Okay. 2 A. So the medical justification had to be 3 objectively presented -- 4 Q. Okay. 5 A. -- and decisions are made on a case-by- 6 case basis. 7 So to the extent that we were able to 8 acquire the information from history or from -- 9 and/or from information provided on the TAR or 10 with the TAR, then we could make a decision from 11 there to approve -- 12 Q. Okay. 13 A. -- or deny. 14 Q. Okay. Did you ever look at the price of 15 the drug when reviewing TAR applications? Or 16 strike that. 17 Was that ever -- was the price of a drug 18 a factor that you ever considered -- 19 A. No. 20 Q. -- when looking at TAR applications? 21 Did you look at the price of a drug when 22 considering TAR applications?</p>

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<p>1 A. No.</p> <p>2 Q. Did you have any other responsibilities</p> <p>3 at the Stockton Drug Unit?</p> <p>4 A. Sometimes I would review appeals, either</p> <p>5 provider appeals or beneficiary appeals.</p> <p>6 Q. And what would a provider or beneficiary</p> <p>7 be appealing?</p> <p>8 A. Usually it was whenever we denied a</p> <p>9 request.</p> <p>10 Q. Okay. Anything else?</p> <p>11 A. No.</p> <p>12 Q. Okay. And how long did you hold that</p> <p>13 position?</p> <p>14 A. Oh, roughly three and a half years.</p> <p>15 Q. Okay. And during that time who was your</p> <p>16 -- between 1991 -- or I guess -- so that would be</p> <p>17 until about -- would that be the middle of 1994?</p> <p>18 A. Approximately.</p> <p>19 Q. Okay. And during that time period when</p> <p>20 you were at the Stockton Drug Unit who was your</p> <p>21 supervisor?</p> <p>22 A. Carlo Michelotti and Joyce Rutan.</p>	<p>1 A. I was promoted to Pharmaceutical</p> <p>2 Consultant II here in Sacramento.</p> <p>3 Q. And what were your responsibilities in</p> <p>4 that position?</p> <p>5 A. From the beginning or now or --</p> <p>6 Q. Let's start from the beginning, if you</p> <p>7 can recall.</p> <p>8 A. In the beginning it was to review</p> <p>9 manufacturer petitions for addition of their drug</p> <p>10 on the Medi-Cal List of Contract Drugs.</p> <p>11 I also wrote OILs in response to</p> <p>12 additions of manufacturers to the authorized</p> <p>13 manufacturer list. And that was primarily --</p> <p>14 those were the main functions --</p> <p>15 Q. Okay.</p> <p>16 A. -- early on.</p> <p>17 Q. And for about how long were those your</p> <p>18 main functions, if you remember?</p> <p>19 A. I wrote OILs for about 10 years and I</p> <p>20 reviewed petitions for probably around 10 years.</p> <p>21 Q. Okay. So you held those kind of</p> <p>22 responsibilities -- those two responsibilities</p>
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<p>1 Q. Could you spell the -- Joyce's last</p> <p>2 name?</p> <p>3 A. R-u-t-a-n.</p> <p>4 Q. R-u-t-a-n, Rutan?</p> <p>5 A. Um-hmm.</p> <p>6 Q. Okay.</p> <p>7 A. Yes.</p> <p>8 Q. Was it Mr. Michelotti and then Ms.</p> <p>9 Rutan?</p> <p>10 I'm sorry. Let me ask a better</p> <p>11 question.</p> <p>12 Was Mr. Michelotti your supervisor first</p> <p>13 and then later in time Joyce Rutan was your</p> <p>14 supervisor?</p> <p>15 A. Correct.</p> <p>16 Q. Do you know approximately the time</p> <p>17 periods?</p> <p>18 A. No.</p> <p>19 Q. And then you left that position you said</p> <p>20 around the middle of 1994; is that correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. And where did you go to next?</p>	<p>1 until about 2004?</p> <p>2 A. Approximately. Maybe 2003. That's</p> <p>3 approximate.</p> <p>4 Q. Okay. But it was about 10 years; right?</p> <p>5 A. Roughly.</p> <p>6 Q. Okay. During that time period who were</p> <p>7 your supervisors?</p> <p>8 A. Immediate supervisor?</p> <p>9 Q. Yes. Let's start with the immediate</p> <p>10 supervisor.</p> <p>11 A. Len Terra. I think it's Leonard,</p> <p>12 actually. L-e-n. Last name T-e-r-r-a. And Kevin</p> <p>13 Gorospe.</p> <p>14 Q. Len Terra, was he a doctor or is he a</p> <p>15 doctor?</p> <p>16 A. Do you mean a medical doctor?</p> <p>17 Q. Well, would you refer to him as Dr.</p> <p>18 Terra or Mr. Terra?</p> <p>19 A. I refer to him as Len.</p> <p>20 Q. Okay. And you refer to Kevin Gorospe as</p> <p>21 Kevin?</p> <p>22 A. Correct.</p>

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<p style="text-align: right;">Page 70</p> <p>1 Q. Okay. Then I assume -- am I correct</p> <p>2 that Len Terra was your supervisor first and then</p> <p>3 Kevin Gorospe?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. Did you have any people that</p> <p>6 reported to you during that time period?</p> <p>7 A. No.</p> <p>8 Q. I want to ask some questions about some</p> <p>9 of your responsibilities then. You had mentioned</p> <p>10 a phrase, "OILs."</p> <p>11 A. Excuse me.</p> <p>12 Yes.</p> <p>13 Q. What is an OIL or OILs?</p> <p>14 A. It's an Operating Instruction Letter.</p> <p>15 Q. Okay. What was the purpose of an OIL?</p> <p>16 What is the purpose of an OIL?</p> <p>17 A. It's to provide instruction to the</p> <p>18 fiscal intermediary so that changes can be made to</p> <p>19 the system regarding the status of a manufacturer</p> <p>20 or a drug on the list, the Medi-Cal List of</p> <p>21 Contract Drugs.</p> <p>22 And then also for the fiscal</p>	<p style="text-align: right;">Page 72</p> <p>1 A. Correct. Well, it's the list that's</p> <p>2 available that tells them what they can prescribe</p> <p>3 without having to submit a TAR or provide</p> <p>4 information for a TAR.</p> <p>5 Q. Okay. And by "prescribers" you mean</p> <p>6 doctors; right?</p> <p>7 A. Whoever has the authority to prescribe</p> <p>8 under California law.</p> <p>9 Q. Okay. Okay. I think this kind of</p> <p>10 dovetails into the first responsibility you</p> <p>11 described. But how would a drug make its way onto</p> <p>12 the Medi-Cal List of Contract Drugs?</p> <p>13 A. Some drugs were grandfathered in when</p> <p>14 the list was created.</p> <p>15 Some drugs are automatically added to</p> <p>16 the list pursuant to statute.</p> <p>17 And drugs that are not -- that were not</p> <p>18 either grandfathered in or added pursuant to</p> <p>19 statute were petitioned for addition by the</p> <p>20 manufacturer.</p> <p>21 And on occasion we would initiate our</p> <p>22 own petition.</p>
<p style="text-align: right;">Page 71</p> <p>1 intermediaries to publish a provider notice of the</p> <p>2 changes whenever those changes would impact the</p> <p>3 provider.</p> <p>4 Q. Okay. And then you said I think the</p> <p>5 fiscal intermediary at this time was EDS. Right?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. You mentioned the Medi-Cal List</p> <p>8 of Contract Drugs.</p> <p>9 A. Correct.</p> <p>10 Q. What is that?</p> <p>11 A. It's the list of drugs that prescribers</p> <p>12 can use -- or a list of drugs that prescribers can</p> <p>13 prescribe to beneficiaries without prior</p> <p>14 authorization, for the most part. So any drug not</p> <p>15 on the list would be subject to prior approval.</p> <p>16 Q. Okay. And you would need to fill out a</p> <p>17 TAR?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. You used a phrase there -- I</p> <p>20 think you used a phrase. I might be wrong. You</p> <p>21 said prescribers can prescribe drugs on the Medi-</p> <p>22 Cal list?</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Just to kind of unpack some of the</p> <p>2 things you said there, when was the list created?</p> <p>3 A. I believe the term "Medi-Cal List of</p> <p>4 Contract Drugs" was born out of statute that was</p> <p>5 passed in -- I'm thinking it was around '91, but</p> <p>6 I'm not sure about that. But prior to that it</p> <p>7 would have been called the Formulary.</p> <p>8 Q. You mentioned that there were some drugs</p> <p>9 that were grandfathered onto the list when the</p> <p>10 list was created. What do you mean by that?</p> <p>11 A. When the name of the list of drugs that</p> <p>12 prescribers could prescribe from without prior</p> <p>13 approval changed from the Formulary to the List of</p> <p>14 Contract Drugs, the process of how that list was</p> <p>15 created, whether it was called the Formulary or</p> <p>16 versus the Medi-Cal List of Contract Drugs,</p> <p>17 changed.</p> <p>18 Q. Okay.</p> <p>19 A. So -- what was the first part of that</p> <p>20 question again?</p> <p>21 MR. CYR: Actually, could I have the</p> <p>22 court reporter read the question back, please.</p>

19 (Pages 70 to 73)

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<p style="text-align: right;">Page 74</p> <p>1 (The reporter read the record as 2 follows: 3 "You mentioned that there were some 4 drugs 5 that were grandfathered onto the list 6 when 7 the list was created. What do you mean 8 by 9 that?") 10 THE WITNESS: Okay. So the new law 11 changed the process from being a regulatory 12 process to a contracting process and gave 13 instructions specifically as to how the list -- 14 the new process, the drugs that would be included 15 on the Medi-Cal List of Contract Drugs would 16 either be retained on or as it transitioned from 17 the Formulary status to the Contract Drug List 18 status. So some of those drugs that were on the 19 Formulary that gained access through the 20 regulatory process were placed onto the list until 21 decisions could be made about the status. And 22 it's in statute. It's in existing statute. So</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Okay. You mentioned -- well, first you 2 mentioned a phrase in there, "single-source drug." 3 Could you explain what you mean by that. 4 A. That means it's only made by one 5 manufacturer. 6 Q. Okay. Is that the same thing as a 7 brand-name drug? 8 A. For the most part. 9 Q. Okay. 10 A. But not always. 11 Q. Okay. What would be the circumstances 12 when a single-source drug wouldn't be the same as 13 a brand-name drug? 14 A. It no longer is single source once it 15 loses its patent and other manufacturers can 16 manufacture the drug, but it would still retain 17 its brand name, even though the drug would be -- 18 or the chemical entity would be available through 19 multiple manufacturers, through multiple sources. 20 Q. Okay. You had mentioned that there were 21 some drugs that were added to the list through 22 statute?</p>
<p style="text-align: right;">Page 75</p> <p>1 that whole process is outlined there. 2 MR. CYR: Q. Okay. Do you have an 3 understanding of that process? 4 A. I have an understanding of how -- yes, I 5 do. 6 Q. Okay. What is that understanding? 7 A. For the transition time? 8 Q. Um-hmm. 9 A. Manufacturers of single-source drugs had 10 a certain amount of time to enter into agreement 11 with the State, with the Department for 12 supplemental rebates. And then also, too, for any 13 new drug that was -- that came to market, the 14 manufacturers were to petition the State for 15 addition -- for evaluation of their drug for 16 addition to the list. 17 Q. Okay. 18 A. So if a determination was made that we 19 shouldn't have a certain drug on the list that was 20 on the list, then we would have to go through a 21 process to delete the drug or -- to delete the 22 drug from the list.</p>	<p style="text-align: right;">Page 77</p> <p>1 A. Correct. 2 Q. Is that correct? 3 Was that a certain category of drugs? 4 A. Correct. 5 Q. What was the criteria in the statute? 6 A. There is a portion of the statute that 7 says that drugs are -- drugs that are approved by 8 the FDA for the treatment of cancer will be added 9 to the list. 10 And there's another piece of statute 11 that says that drugs that are approved by the FDA 12 for AIDS or AIDS-related -- or for the treatment 13 of AIDS or AIDS-related conditions will be added 14 to the list. 15 Q. Okay. Any other categories of drugs? 16 A. No. 17 Q. Okay. And I think you said that drugs 18 that either weren't grandfathered onto the list or 19 weren't in those categories that were statutorily 20 required to be added to the list, drug 21 manufacturers would petition to have their drugs 22 added to the list?</p>

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<p style="text-align: right;">Page 78</p> <p>1 A. Correct.</p> <p>2 Q. And how did that process work?</p> <p>3 A. The manufacturer would have to send a</p> <p>4 letter requesting evaluation of their drug for</p> <p>5 addition to the list, and that would be the</p> <p>6 petition.</p> <p>7 Q. Okay. And what were the criteria that</p> <p>8 you used to determine whether to add a</p> <p>9 manufacturer's drug to the list?</p> <p>10 A. The criteria are in statute.</p> <p>11 Q. Okay.</p> <p>12 A. And they are the misuse potential,</p> <p>13 safety, efficacy, essential need, and cost.</p> <p>14 Q. Just going through some of those</p> <p>15 criteria, by "misuse potential," what do you mean</p> <p>16 by that?</p> <p>17 A. Each criterion is further defined in</p> <p>18 regs, Title 22, so misuse potential or any of the</p> <p>19 criteria were evaluated according to how each</p> <p>20 criterion is defined in regulation.</p> <p>21 Q. Okay. But what's your understanding of</p> <p>22 the phrase "misuse potential"?</p>	<p style="text-align: right;">Page 80</p> <p>1 You had mentioned before that it was</p> <p>2 your job to review these petitions that</p> <p>3 manufacturers had submitted; is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. And you would apply these five criteria?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. What information did you look at</p> <p>8 when you were considering the cost criteria?</p> <p>9 A. I would look at information provided by</p> <p>10 the drug manufacturer and I would look at the --</p> <p>11 because the criterion requires that we compare it</p> <p>12 to the cost of other drugs that are used for</p> <p>13 treatment of the same condition or that are in the</p> <p>14 same therapeutic category, I would look at -- I</p> <p>15 would look at the cost of those drugs as well.</p> <p>16 I might look at whether or not the drug</p> <p>17 would replace existing therapy or be in addition</p> <p>18 to existing treatments, and also consider offsets</p> <p>19 that might be gained through the use of the drug.</p> <p>20 Q. What do you mean by "offsets"?</p> <p>21 A. If the drug could be used on an</p> <p>22 outpatient basis, for example, to avert an</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Misuse potential would be potential for</p> <p>2 diversion or use of a more costly product in lieu</p> <p>3 of a less costly product that would have the same</p> <p>4 therapeutic efficacy --</p> <p>5 Q. Okay.</p> <p>6 A. -- or that could be used for the same</p> <p>7 condition.</p> <p>8 Q. Okay.</p> <p>9 A. Or use of the drug when not</p> <p>10 therapeutically appropriate.</p> <p>11 Q. Okay. By "safety," I assume you mean</p> <p>12 whether or not the drug posed a health risk to the</p> <p>13 patient or...</p> <p>14 A. Again it's according to how it's defined</p> <p>15 in Title 22 --</p> <p>16 Q. Okay.</p> <p>17 A. -- because it's as compared to other</p> <p>18 drugs that could be used for treatment of the same</p> <p>19 condition.</p> <p>20 Q. Okay. If we could turn to the last</p> <p>21 factor you mentioned, the cost, what information</p> <p>22 would you look at -- strike that.</p>	<p style="text-align: right;">Page 81</p> <p>1 inpatient stay.</p> <p>2 If the drug could be used in lieu of a</p> <p>3 more costly therapy, like an IV therapy versus</p> <p>4 oral therapy.</p> <p>5 If the drug could avert or decrease</p> <p>6 hospital stay or emergency room -- decrease</p> <p>7 emergency room visits.</p> <p>8 Q. Okay.</p> <p>9 A. Office visits.</p> <p>10 THE VIDEOGRAPHER: Counsel, we have</p> <p>11 about six minutes or so.</p> <p>12 MR. CYR: Okay.</p> <p>13 Q. In other words, whether the drug would</p> <p>14 replace a more costly treatment alternative; is</p> <p>15 that correct?</p> <p>16 A. Partially.</p> <p>17 Q. Okay. How is it inaccurate?</p> <p>18 A. It's inaccurate in that it isn't just a</p> <p>19 comparison of whether or not it would replace a</p> <p>20 more costly therapeutic alternative, but also a</p> <p>21 less costly. It wasn't only comparing it to more</p> <p>22 costly, but also to less costly.</p>

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<p style="text-align: right;">Page 82</p> <p>1 Q. Okay. I understand.</p> <p>2 You had mentioned that there was certain</p> <p>3 information that you would consider when</p> <p>4 considering the cost criteria as provided by the</p> <p>5 drug manufacturer?</p> <p>6 A. Correct.</p> <p>7 Q. What information would the drug</p> <p>8 manufacturer provide?</p> <p>9 A. Oftentimes we would get petitions for</p> <p>10 drugs that were newly marketed, newly released</p> <p>11 into the marketplace, so we would have to get AWP,</p> <p>12 Average Wholesale Price, from the manufacturer, we</p> <p>13 would have to get the AMP from the manufacturer,</p> <p>14 at times we would have to get their HCFA Rebate,</p> <p>15 and then also whatever their business proposal was</p> <p>16 for supplemental rebate.</p> <p>17 MR. CYR: I think we need to change the</p> <p>18 tape now, so this would be a good place to take a</p> <p>19 break.</p> <p>20 THE VIDEOGRAPHER: This concludes tape 1</p> <p>21 of today's deposition.</p> <p>22 We are now going off record at</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Sure.</p> <p>2 A. When I first started, we also used</p> <p>3 Direct Price. So they would -- some manufacturers</p> <p>4 were Direct Price, some were Average Wholesale</p> <p>5 Price. But in either case the information came</p> <p>6 from the manufacturer. That type of pricing</p> <p>7 information would come from the manufacturer.</p> <p>8 And the reason that we needed it was</p> <p>9 since one of the drug evaluation criteria is cost,</p> <p>10 we would need the information to determine what</p> <p>11 the drug ingredient cost would be for -- to the</p> <p>12 Department.</p> <p>13 Q. Okay. You used the phrase "drug</p> <p>14 ingredient cost." Is that a term that's used in</p> <p>15 the reimbursement process? You know what, strike</p> <p>16 that.</p> <p>17 When you talk about the cost to the</p> <p>18 Department, is the cost to the Department what the</p> <p>19 Department pays the pharmacist who dispenses the</p> <p>20 drug to a Medicaid beneficiary?</p> <p>21 A. That's one aspect of cost.</p> <p>22 Q. Okay. And how is the AWP or the Direct</p>
<p style="text-align: right;">Page 83</p> <p>1 approximately 11:15.</p> <p>2 This is the beginning of tape 2 in</p> <p>3 today's video deposition of Katherine Ahrens.</p> <p>4 We're back on the video record</p> <p>5 approximately 11:25.</p> <p>6 MR. CYR: Q. Ms. Ahrens, before the</p> <p>7 break we were talking about some of the</p> <p>8 information that a manufacturer -- some of the</p> <p>9 cost information that a manufacturer would provide</p> <p>10 to you with a petition and one of the terms you</p> <p>11 used was AWP?</p> <p>12 A. Correct.</p> <p>13 Q. What's your understanding of that term?</p> <p>14 MR. GLASER: Object as to form.</p> <p>15 MR. CYR: Q. You can go ahead and</p> <p>16 answer the question.</p> <p>17 A. It means Average Wholesale Price.</p> <p>18 Q. Okay. And why would a manufacturer</p> <p>19 provide that information to you on the -- on its</p> <p>20 petition?</p> <p>21 A. The Average Wholesale Price -- I need to</p> <p>22 back up a little bit, too.</p>	<p style="text-align: right;">Page 85</p> <p>1 Price relevant -- strike that.</p> <p>2 Is AWP relevant to that aspect of the</p> <p>3 cost?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. How is it relevant?</p> <p>6 A. AWP is specified as one of the factors</p> <p>7 used in the calculation of how much a pharmacist</p> <p>8 would be reimbursed for dispensing a drug.</p> <p>9 Q. Okay. Would AWP be used -- would AWP be</p> <p>10 used as a basis to calculate the payment to the</p> <p>11 pharmacist?</p> <p>12 A. It's one of -- it depends upon the drug.</p> <p>13 Q. Okay.</p> <p>14 A. It's one of the calculations.</p> <p>15 Q. Okay. And what were the other -- let's</p> <p>16 consider a generic drug. What would be the other</p> <p>17 possible payment calculations for a generic drug?</p> <p>18 A. If the generic drug had a federal upper</p> <p>19 limit, that would be part of the calculation.</p> <p>20 Or if we had an MAIC -- if Medi-Cal had</p> <p>21 applied its own MAIC, that would be included in</p> <p>22 the determination. So it's the lowest of AWP</p>

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<p style="text-align: right;">Page 86</p> <p>1 minus whatever or the FAC or the MAIC or the</p> <p>2 provider's usual and customary --</p> <p>3 Q. Okay.</p> <p>4 A. -- cost of dispensing fee.</p> <p>5 Q. So it would be the lowest of those four</p> <p>6 possible prices?</p> <p>7 A. Um-hmm.</p> <p>8 Q. And that would be the amount -- now,</p> <p>9 would it be that -- during the time period between</p> <p>10 1994 and 2004, would it be -- was it just a flat</p> <p>11 AWP as one of the payment bases or was AWP perhaps</p> <p>12 discounted?</p> <p>13 MR. GLASER: Object as to form.</p> <p>14 THE WITNESS: Discounted by whom?</p> <p>15 MR. CYR: Q. Let me ask a better</p> <p>16 question.</p> <p>17 If AWP was the payment basis for a drug,</p> <p>18 would the AWP -- would the pharmacist be paid the</p> <p>19 AWP or would the pharmacist be paid AWP less a</p> <p>20 certain percentage?</p> <p>21 MR. GLASER: Object as to form.</p> <p>22 THE WITNESS: AWP wasn't the basis for</p>	<p style="text-align: right;">Page 88</p> <p>1 A. Again, how cost was evaluated was</p> <p>2 defined in regs, and so all those elements in that</p> <p>3 definition were included in the evaluation. So</p> <p>4 offsets, the cost of the drug itself, any</p> <p>5 supplemental rebates that the manufacturer might</p> <p>6 propose --</p> <p>7 Q. Okay.</p> <p>8 A. -- and the rebate that was due pursuant</p> <p>9 to the federal rebate agreement.</p> <p>10 Q. Okay. You had mentioned another piece</p> <p>11 of data that the manufacturer would provide to you</p> <p>12 with a petition, AMP.</p> <p>13 A. The manufacturer would not provide the</p> <p>14 AMP all the time. During the course of the</p> <p>15 negotiations or evaluation of the drug, the AMP</p> <p>16 may have been provided, depending upon the</p> <p>17 proposal submitted by the manufacturer.</p> <p>18 Q. Okay. You mentioned a phrase in there,</p> <p>19 "supplemental rebate." What do you mean by that?</p> <p>20 A. Supplemental rebate is an amount that</p> <p>21 the manufacturer agrees to provide the State</p> <p>22 pursuant to agreement that is beyond what the</p>
<p style="text-align: right;">Page 87</p> <p>1 the reimbursement.</p> <p>2 It's the basis for a calculation --</p> <p>3 MR. CYR: Q. Okay.</p> <p>4 A. -- that would lead to the reimbursement.</p> <p>5 Q. Okay.</p> <p>6 A. But it wasn't the reimbursement.</p> <p>7 Q. Okay. And what was the calculation for</p> <p>8 the reimbursement?</p> <p>9 A. Again, the lowest of the AWP minus --</p> <p>10 depending upon the time period -- either five</p> <p>11 percent, 10 percent or 17 percent.</p> <p>12 Q. Okay.</p> <p>13 A. Or the FAC or the MAIC plus a dispensing</p> <p>14 fee.</p> <p>15 Q. Okay. Okay. You had mentioned that the</p> <p>16 reimbursement payment to the pharmacist was one of</p> <p>17 the factors you looked at when considering the</p> <p>18 cost -- or one of the factors -- one of the</p> <p>19 elements that made up the cost to the program.</p> <p>20 What are the other elements that make up</p> <p>21 the -- that make up the cost? I'm sorry. Go</p> <p>22 ahead.</p>	<p style="text-align: right;">Page 89</p> <p>1 manufacturer otherwise provides through the</p> <p>2 federal rebate agreement.</p> <p>3 Q. Okay. And when a manufacturer would</p> <p>4 petition the -- petition the Department for</p> <p>5 inclusion on the Medi-Cal Drug List, would the</p> <p>6 manufacturer submit a supplemental rebate</p> <p>7 proposal?</p> <p>8 A. Not with a petition.</p> <p>9 Q. Not with a petition?</p> <p>10 A. Not typically.</p> <p>11 Q. Would the manufacturer subsequently</p> <p>12 submit a supplemental rebate proposal?</p> <p>13 A. Sometimes.</p> <p>14 Q. Okay.</p> <p>15 A. Sometimes it was zero.</p> <p>16 Q. But that was usually something -- was</p> <p>17 that usually something that was initiated by the</p> <p>18 manufacturer in the negotiation process?</p> <p>19 A. That's the purpose of the petition is to</p> <p>20 petition for inclusion of their drug on the Medi-</p> <p>21 Cal List of Contract Drugs. It's a contract.</p> <p>22 Part of the evaluation -- the evaluation process</p>

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<p style="text-align: right;">Page 90</p> <p>1 includes cost, and more often than not</p> <p>2 manufacturers would also include in their business</p> <p>3 proposal a proposal for supplemental rebate.</p> <p>4 Q. Okay. You had mentioned also a HCFA</p> <p>5 Rebate. What do you mean by that?</p> <p>6 A. That would be the rebate amount that the</p> <p>7 manufacturer would pay pursuant to their federal</p> <p>8 rebate agreement.</p> <p>9 Q. Okay. Can a manufacturer's drug be</p> <p>10 reimbursed under the Medicaid program without a</p> <p>11 HCFA agreement?</p> <p>12 A. Yes.</p> <p>13 Q. What are the circumstances in which that</p> <p>14 can happen?</p> <p>15 A. Upon approval of a TAR.</p> <p>16 Q. But it would be necessary to submit a</p> <p>17 TAR if a manufacturer did not have a HCFA Rebate?</p> <p>18 A. Correct.</p> <p>19 Q. How does the HCFA Rebate work? Strike</p> <p>20 that. Let me ask a better question.</p> <p>21 How is the amount of the rebate that's</p> <p>22 covered under the HCFA Rebate agreement, how is</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. CYR: Q. You can answer the</p> <p>2 question if you can.</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So the amount of the rebate that</p> <p>5 Medi-Cal receives pursuant to the HCFA agreement</p> <p>6 is one of the factors that's considered when</p> <p>7 you're looking at the cost criteria on a</p> <p>8 manufacturer's petition; is that correct?</p> <p>9 A. The number is considered.</p> <p>10 The amount --</p> <p>11 Q. Well, I guess you don't know the amount</p> <p>12 when you're looking at the petition; right?</p> <p>13 But the URA is considered; is that</p> <p>14 correct?</p> <p>15 A. It's part of what we would look at.</p> <p>16 Q. Okay.</p> <p>17 A. And looking at the drug ingredient cost.</p> <p>18 Q. Okay. So you would look at...</p> <p>19 So you would look at essentially -- when</p> <p>20 you're determining the cost of the drug to the</p> <p>21 program, you would look at three numbers, the drug</p> <p>22 ingredient cost, the HCFA Rebate amount, and any</p>
<p style="text-align: right;">Page 91</p> <p>1 that calculated?</p> <p>2 A. For single-source drugs, it's based on</p> <p>3 best price or at least 15 percent of the</p> <p>4 manufacturer's AMP plus any CPI penalties that may</p> <p>5 be applied to the drug.</p> <p>6 Q. Okay.</p> <p>7 A. For multi-source drugs, it's 11 percent</p> <p>8 of AMP.</p> <p>9 Q. Are those two figures sometimes referred</p> <p>10 to as the URA, or Unit Rebate Amount?</p> <p>11 A. Which, the --</p> <p>12 Q. Well, I guess let's simplify it.</p> <p>13 For multi-source drugs, 11 percent of</p> <p>14 AMP, is that sometimes referred to as the Unit</p> <p>15 Rebate Amount?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And for a multi-source drug, is</p> <p>18 the rebate that a manufacturer will pay to, say,</p> <p>19 the Medi-Cal program, is that calculated by</p> <p>20 multiplying the URA times the number of units that</p> <p>21 Medi-Cal reimbursed for for a given quarter?</p> <p>22 MR. GLASER: Object as to form.</p>	<p style="text-align: right;">Page 93</p> <p>1 supplemental rebate amount that the manufacturer</p> <p>2 was willing to provide; is that correct?</p> <p>3 A. Partially correct.</p> <p>4 Q. Okay.</p> <p>5 A. The cost analysis would -- and I think I</p> <p>6 stated it previously. We look at the potential</p> <p>7 impact of addition to -- addition of that drug on</p> <p>8 the list, would the drug be in addition to or in</p> <p>9 lieu of another drug and less costly or what would</p> <p>10 the utilization -- potential utilization of the</p> <p>11 drug be compared to other drugs that might be used</p> <p>12 to treat the same condition or that were in the</p> <p>13 same category --</p> <p>14 Q. Okay.</p> <p>15 A. -- as that particular drug.</p> <p>16 Q. Okay. Could you describe how the</p> <p>17 supplemental rebate amounts are typically</p> <p>18 calculated?</p> <p>19 MR. GLASER: Object as to form.</p> <p>20 THE WITNESS: It would depend upon the</p> <p>21 business proposal that the manufacturer would</p> <p>22 submit.</p>

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<p style="text-align: right;">Page 94</p> <p>1 MR. CYR: Q. Okay. Are there types of 2 supplemental rebate contracts that you would see 3 typically? 4 MR. GLASER: Object as to form. 5 THE WITNESS: We have different types of 6 contracts. 7 MR. CYR: Q. Okay. 8 A. But it was still up to the manufacturer 9 to determine their own business proposal. 10 MR. CYR: Let me introduce a document 11 that I think might help with this question. 12 Hold on one second. 13 I apologize for the delay. 14 Would you mark that as Ahrens 1. 15 (Exhibit Ahrens 001 marked) 16 MR. CYR: Q. Ms. Ahrens, could you take 17 a minute to review this document. 18 And just for the record, this is a 19 document that was produced by the State of 20 California, Bates-stamped CAAG/DHS0068437, and it 21 was previously marked in the deposition of Craig 22 Miller on September 24th, 2008.</p>	<p style="text-align: right;">Page 96</p> <p>1 decrease in dispensing fees)." 2 Did I read that correctly? 3 A. Yes. 4 Q. Okay. And then it lists or gives three 5 different -- three different examples. One is an 6 example for Gorillacillin, 500-milligram capsule, 7 and that's described as a single-source drug 8 manufactured by a non-direct company; is that 9 correct? 10 A. That's what's printed here, yes. 11 Q. Okay. And the second example is for a 12 Direct Price drug called Godzillacillin, 500- 13 milligram capsule, which is a single-source drug 14 manufactured by a Direct Price company. Is that 15 what's listed there? 16 A. Correct. 17 Q. And then the third example is for a 18 generic drug and there's no clever name for it and 19 it's a drug manufactured a non-Direct Price 20 company but has no federal or state upper price 21 limits; is that correct? 22 A. Correct.</p>
<p style="text-align: right;">Page 95</p> <p>1 You've had a chance to review the 2 document? 3 A. Um-hmm. Yes. 4 Q. Okay. Do you recognize this document? 5 A. I recognize the format of this document. 6 Q. Okay. 7 A. But not this -- 8 Q. Not this particular document? 9 A. Correct. 10 Q. Looking at this document, at the top -- 11 there's a heading at the top, it says "Medi-Cal 12 Contracting Section Pharmacy Pricing Calculation 13 Examples." And then below that heading it reads 14 "Here is the rule Medi-Cal uses to calculate its 15 net cost per unit. Medi-Cal's net cost per unit 16 is calculated as the lower of AWP minus 5 percent 17 or Direct Price or Federal Upper Limit Price (FUL) 18 or State Upper Level Price (MAIC) minus all 19 manufacturer rebates. In some cases, differences 20 in the pharmacist's fee must also be included (for 21 example, when a new product can replace two older 22 prescriptions, Medi-Cal will take into account the</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. And you've had a chance to review the 2 document. 3 The three columns lay out a sort of cost 4 analysis. Does that reflect the type of analysis 5 that you would do when you would consider drug 6 manufacturers' petitions, at least the cost 7 element of drug manufacturers' petitions? 8 A. No. 9 Q. In what way are these different from the 10 type of analysis you would do? 11 A. This layout here is just looking at one 12 drug. 13 The analysis in order to assess cost to 14 Medi-Cal would also include offsets or consider 15 whether or not the drug was in addition to or in 16 lieu of other drugs and it would be a comparison 17 of the overall impact -- or analysis of the 18 overall impact adding that drug to the Medi-Cal 19 List of Contract Drugs would have on the Medi-Cal 20 drug program and potentially the Medi-Cal program 21 as a whole. 22 Q. Okay. But was this -- does this reflect</p>

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<p>1 a portion of the analysis that you would do?</p> <p>2 A. Yes.</p> <p>3 Q. What portion of the analysis does it</p> <p>4 reflect?</p> <p>5 A. Calculation of drug ingredient cost.</p> <p>6 Q. Okay. And let's look at the third</p> <p>7 column, Example 3. Go down the column. There's</p> <p>8 the "Price Per Capsule" and that reads "AWP," and</p> <p>9 then you go across to the right and it reads</p> <p>10 "\$3.00." Did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. And then "AWP minus 5%" and there is a</p> <p>13 parenthetical that reads "calculated as AWP times</p> <p>14 .95," and then you go across and that reads</p> <p>15 "\$2.85"?</p> <p>16 A. Correct.</p> <p>17 Q. And in this hypothetical that AWP minus</p> <p>18 5 percent, that would be the amount that's paid to</p> <p>19 the provider; is that correct?</p> <p>20 A. The AWP minus 5 percent?</p> <p>21 Q. Um-hmm.</p> <p>22 A. No, that is not correct.</p>	<p>1 A. Correct.</p> <p>2 Q. Okay. We go farther on down and it says</p> <p>3 Medi-Cal's lowest price is \$2.85; is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. Do you have an understanding of what's</p> <p>6 meant by that?</p> <p>7 A. Medi-Cal's lowest price?</p> <p>8 Q. Um-hmm.</p> <p>9 A. Yes.</p> <p>10 Q. And what is that understanding?</p> <p>11 A. The lowest of the FUL, the MAIC and the</p> <p>12 scenario Direct Price or AWP minus 5 percent.</p> <p>13 Q. Okay. And in this little example, if,</p> <p>14 say, there was a FUL for this drug and it was,</p> <p>15 say, \$2.50, that would be Medi-Cal's lowest price</p> <p>16 in this case; right?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And then below that there's the</p> <p>19 Average Manufacturer's Price as reported to HCFA?</p> <p>20 A. Yes.</p> <p>21 Q. And that's 50 cents?</p> <p>22 A. That's what's written there.</p>
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<p>1 Q. What's incorrect about that?</p> <p>2 A. It does not include the dispensing fee.</p> <p>3 The provider is reimbursed the ingredient cost</p> <p>4 plus a dispensing fee.</p> <p>5 Q. I guess, just for the sake of clarity,</p> <p>6 if the provider submitted a usual and customary</p> <p>7 charge that was lower than \$2.85 plus the</p> <p>8 dispensing fee, the provider would be paid that</p> <p>9 amount; is that correct?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. But taking away the dispensing</p> <p>12 fee and assuming that the usual and customary</p> <p>13 charge was not lower than the AWP minus 5 percent</p> <p>14 plus a dispensing fee, the \$2.85 would be the</p> <p>15 amount that was paid to the provider for this</p> <p>16 drug; is that correct?</p> <p>17 A. Not taking into account the dispensing</p> <p>18 fee, correct.</p> <p>19 Q. Okay.</p> <p>20 A. And assuming no FUL or MAIC.</p> <p>21 Q. And it looks like they make that</p> <p>22 assumption here in this example; is that correct?</p>	<p>1 Q. That's what's written there, right.</p> <p>2 Okay.</p> <p>3 And then below that reads "Medi-Cal's</p> <p>4 AMP calculation." And then it reads "In this</p> <p>5 example, Medi-Cal agrees to add a drug to the list</p> <p>6 if the manufacturer will give us a 40% rebate over</p> <p>7 HCFA." Did I read that correctly?</p> <p>8 A. You did.</p> <p>9 Q. Okay. What's your understanding of what</p> <p>10 is being said there?</p> <p>11 A. My understanding of what's being said</p> <p>12 here is that if a generic company petitioned and</p> <p>13 agreed to provide a supplemental rebate that is in</p> <p>14 excess of what is provided -- or a rebate that's</p> <p>15 in excess of what's provided to the federal rebate</p> <p>16 agreement, then we would agree to add that drug to</p> <p>17 the list. And "List" here is capitalized in</p> <p>18 reference to the Medi-Cal List of Contract Drugs.</p> <p>19 Q. Okay.</p> <p>20 A. So that's in this make believe scenario.</p> <p>21 Q. Okay. Did you do analyses like this</p> <p>22 when you were reviewing petitions?</p>

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<p style="text-align: right;">Page 102</p> <p>1 MR. GLASER: Object as to form.</p> <p>2 THE WITNESS: The analyses -- the fiscal</p> <p>3 analyses would be in this format in that, as it</p> <p>4 states in the header area here, that we calculate</p> <p>5 the lower of AWP minus 5 direct FUL or MAIC minus</p> <p>6 all manufacturer rebates.</p> <p>7 Q. Right.</p> <p>8 A. So to the extent that there were rebates</p> <p>9 or rebate information available to us, then yes,</p> <p>10 that calculation would be included in the</p> <p>11 analysis.</p> <p>12 Q. Okay. Let's go through this analysis a</p> <p>13 little more.</p> <p>14 Below that portion that we just looked</p> <p>15 at there's -- it reads "HCFA Rebate" and then in</p> <p>16 parenthetical is a "straight 11%" and then there's</p> <p>17 an "11%" over on the right side.</p> <p>18 A. Um-hmm.</p> <p>19 Q. And then it reads "California</p> <p>20 supplemental rebate %."</p> <p>21 A. Um-hmm.</p> <p>22 Q. And then there's a "40%" over on the</p>	<p style="text-align: right;">Page 104</p> <p>1 this drug is 26 cents; is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay.</p> <p>4 A. No. Is it 26? I can't read it. Yes.</p> <p>5 Q. Okay. It's very hard to read. I'm</p> <p>6 sorry. The print is so small.</p> <p>7 And then there's a sentence that reads</p> <p>8 "Therefore, Medi-Cal's cost is calculated as:</p> <p>9 Medi-Cal's lowest price," which is AWP minus 5</p> <p>10 percent in this case, and that's given as \$2.85,</p> <p>11 minus the total rebates, which would be minus 26</p> <p>12 cents in this case, to give Medi-Cal's net cost,</p> <p>13 which would be \$2.59. Did I read that correctly?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. So the net cost in this case is</p> <p>16 the amount you would pay the provider for</p> <p>17 reimbursement less the HCFA Rebate -- the amount</p> <p>18 that you would receive for the HCFA Rebate less</p> <p>19 the amount -- the amount of any supplemental</p> <p>20 rebate over and above the HCFA Rebate that the</p> <p>21 manufacturer would be willing to give you; is that</p> <p>22 correct?</p>
<p style="text-align: right;">Page 103</p> <p>1 right side.</p> <p>2 A. Um-hmm.</p> <p>3 Q. And I think that references the 40</p> <p>4 percent in that sentence above. Is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And then the total rebate amount</p> <p>7 is 51 percent?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And then below that there's a</p> <p>10 line, and then below that it reads "AMP," and the</p> <p>11 AMP amount is 50 cents?</p> <p>12 A. Correct.</p> <p>13 Q. And then the HCFA Rebate amount is AMP</p> <p>14 times 11 percent, which works out to be -- they</p> <p>15 list here as -- there as six cents.</p> <p>16 A. Yes.</p> <p>17 Q. And then the California supplemental</p> <p>18 rebate amount would be AMP times 40 percent; is</p> <p>19 that correct?</p> <p>20 A. Correct.</p> <p>21 Q. And that works out to be 20 cents.</p> <p>22 So the total rebate amount per unit for</p>	<p style="text-align: right;">Page 105</p> <p>1 A. No. It's not -- the pharmacy -- that's</p> <p>2 not the amount that we reimburse the pharmacy.</p> <p>3 Q. That's because -- reading the -- are you</p> <p>4 looking at the AWP minus 5 percent, the third line</p> <p>5 from the bottom?</p> <p>6 A. Okay. Yeah.</p> <p>7 Q. Okay. And that's not the total amount</p> <p>8 you reimburse the pharmacy; correct? Because it</p> <p>9 doesn't include the dispensing fee?</p> <p>10 A. Right.</p> <p>11 Q. Okay. But for the ingredient cost</p> <p>12 portion of the reimbursement -- do you understand</p> <p>13 what I mean by that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. That would be -- that figure</p> <p>16 would represent the reimbursement -- or the</p> <p>17 ingredient cost portion of the reimbursement; is</p> <p>18 that correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay.</p> <p>21 A. I understood you to say, though, that</p> <p>22 the amount minus the rebate represented the</p>

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<p style="text-align: right;">Page 106</p> <p>1 pharmacy reimbursement for ingredient.</p> <p>2 Q. No, no, no. I'm sorry if I misspoke.</p> <p>3 The ingredient cost portion minus the</p> <p>4 rebate represents the Medi-Cal program's net cost</p> <p>5 for the drug; is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And so when the manufacturer --</p> <p>8 so the supplemental rebate would essentially be --</p> <p>9 strike that.</p> <p>10 In this example, the supplemental rebate</p> <p>11 is calculated as a percentage of AMP; is that</p> <p>12 correct?</p> <p>13 A. In Example 3, yes.</p> <p>14 Q. Okay. Is that always the way</p> <p>15 supplemental rebate agreements are calculated?</p> <p>16 A. As a percent of AMP?</p> <p>17 Q. Um-hmm.</p> <p>18 A. No.</p> <p>19 Q. What other ways are supplemental rebate</p> <p>20 amounts calculated?</p> <p>21 A. Again depending upon the business</p> <p>22 proposal.</p>	<p style="text-align: right;">Page 108</p> <p>1 wouldn't happen with generics, but it would happen</p> <p>2 with single-source drugs.</p> <p>3 Q. Okay.</p> <p>4 A. If the CMS or HCFA Rebate were to</p> <p>5 change, to increase because of best price and/or</p> <p>6 CPI penalties, then at the point which the CMS</p> <p>7 plus the supplemental exceeded 55 percent, the</p> <p>8 supplemental would be decreased such that the</p> <p>9 total rebate would be equal to 55 percent, just</p> <p>10 using that as an example.</p> <p>11 Q. Let me stop you right there. I want to</p> <p>12 clarify something.</p> <p>13 55 percent of AMP in this case?</p> <p>14 A. Rebates when they're percentage based</p> <p>15 are always a percent of AMP.</p> <p>16 Q. Okay.</p> <p>17 A. Which also changes quarterly.</p> <p>18 Q. Right.</p> <p>19 A. The other type of rebate -- or proposals</p> <p>20 that we would receive would be for net cost. So</p> <p>21 that means that the manufacturer would say</p> <p>22 regardless of what happens to the AWP or the CMS</p>
<p style="text-align: right;">Page 107</p> <p>1 Sometimes manufacturers will offer a</p> <p>2 supplemental rebate that is in addition to, so a</p> <p>3 HCFA or CMS plus a supplemental rebate.</p> <p>4 Sometimes they'll offer --</p> <p>5 Q. Let me just stop you right there.</p> <p>6 Is the analysis that's done in Example</p> <p>7 3, is that a HCFA plus analysis?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. Please go ahead.</p> <p>10 A. Another type would be a total rebate --</p> <p>11 Q. Okay.</p> <p>12 A. -- in which case, for example, if we</p> <p>13 were to use this example, the offer might be for a</p> <p>14 total rebate of 40 percent, which means that as</p> <p>15 the HCFA or CMS Rebate increases, then the</p> <p>16 supplemental rebate decreases.</p> <p>17 Q. Okay.</p> <p>18 A. Sometimes there's an offer for a CMS</p> <p>19 plus with a cap. So they might offer, using again</p> <p>20 this example, CMS -- or HCFA plus 40 percent with</p> <p>21 a cap of 55, 55 percent, a total rebate of 55</p> <p>22 percent. So that would mean that if -- and this</p>	<p style="text-align: right;">Page 109</p> <p>1 HCFA Rebate, we will give or agree to give a</p> <p>2 supplemental rebate such that the net cost as</p> <p>3 calculated here would always equal -- would always</p> <p>4 net a certain amount. So if it were a dollar --</p> <p>5 if the net costs were always going to be a dollar</p> <p>6 and AWP started out at \$2 and the CMS Rebate was</p> <p>7 50 cents, then they would initially start with a</p> <p>8 50-cent rebate. If the AWP went up, AWP minus, if</p> <p>9 it had gone up and the CMS Rebate stayed the same,</p> <p>10 then our supplemental rebate would increase to get</p> <p>11 to that net cost amount that was agreed upon.</p> <p>12 Q. Okay.</p> <p>13 A. So there are variations --</p> <p>14 Q. Okay.</p> <p>15 A. -- to --</p> <p>16 Q. To the different types of supplemental</p> <p>17 rebates? To the --</p> <p>18 A. To the different types of contracts for</p> <p>19 supplemental rebates.</p> <p>20 Q. Okay. Okay. And at least, just to --</p> <p>21 just to clear up one point, at least sometimes the</p> <p>22 supplemental rebate amount will be based on AMP;</p>

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<p>1 is that correct?</p> <p>2 A. Sometimes a supplemental rebate is based</p> <p>3 on a percent of AMP.</p> <p>4 Q. A percentage of AMP. Okay.</p> <p>5 You had said that the manufacturer will</p> <p>6 sometimes provide you with AMP as part of the</p> <p>7 petition process. And would the manufacturer</p> <p>8 provide you with AMP because the AMP would be</p> <p>9 relevant to the supplemental rebate --</p> <p>10 A. Correct.</p> <p>11 Q. -- amount negotiation?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Does the Department collect AMPs</p> <p>14 from manufacturers on a regular basis?</p> <p>15 A. No.</p> <p>16 Q. How does the Department -- I guess once</p> <p>17 the supplemental rebate -- once a supplemental</p> <p>18 rebate agreement where the amount of the rebate as</p> <p>19 a percentage and AMP has been negotiated, how does</p> <p>20 the Department go about calculating the rebate</p> <p>21 amount?</p> <p>22 A. The rebate amount would be based on --</p>	<p>1 need to pay a supplemental rebate to the Medi-Cal</p> <p>2 program in order to be on the Contract Drug List?</p> <p>3 A. No.</p> <p>4 Q. What would be the circumstances under</p> <p>5 which a drug would be included on the program --</p> <p>6 on the Medi-Cal Contract Drug List?</p> <p>7 And this is setting aside the -- setting</p> <p>8 aside the -- I think you had mentioned cancer</p> <p>9 drugs and AIDS drugs and certain drugs that had</p> <p>10 been grandfathered onto the list.</p> <p>11 What would be the circumstances under</p> <p>12 which a drug would be included on the list without</p> <p>13 the manufacturer being obligated to pay a</p> <p>14 supplemental rebate to the program?</p> <p>15 A. If a drug was added to the list pursuant</p> <p>16 to a rebate agreement, pursuant to having met the</p> <p>17 criteria for addition to the list, and that drug</p> <p>18 became multi-source sometime after inclusion on</p> <p>19 the list, then once the drug becomes available</p> <p>20 through multiple manufacturers, so long as a</p> <p>21 manufacturer has a CMS -- or rebate agreement in</p> <p>22 place, we cover that manufacturer's drug without</p>
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<p>1 again, assuming we're talking about a contract</p> <p>2 that was negotiated that was a percent of AMP, the</p> <p>3 Department depends upon the manufacturer to submit</p> <p>4 their AMP information for that particular drug in</p> <p>5 a timely manner so that rebate can then be</p> <p>6 calculated.</p> <p>7 Q. Okay. So the manufacturer submits its</p> <p>8 AMP to the Department --</p> <p>9 A. The manufacturer calculates and submits</p> <p>10 AMP.</p> <p>11 Q. Okay. How often does a manufacturer</p> <p>12 submit AMP? Strike that.</p> <p>13 How often does the Department require a</p> <p>14 manufacturer to submit AMP?</p> <p>15 MR. GLASER: Object to the form.</p> <p>16 THE WITNESS: To the extent that the</p> <p>17 Department has a rebate agreement with that</p> <p>18 manufacturer that is AMP based, we require that</p> <p>19 AMP be sent to us on a quarterly basis during the</p> <p>20 terms of the contract, the duration of the</p> <p>21 contract.</p> <p>22 MR. CYR: Q. Okay. Does a manufacturer</p>	<p>1 prior authorization. So there would be no need</p> <p>2 for a supplemental rebate if -- if you made a drug</p> <p>3 and you were single source and you're on the list</p> <p>4 and you have a supplemental rebate agreement with</p> <p>5 the State of California, then after a period of</p> <p>6 time your drug loses its exclusivity in that other</p> <p>7 manufacturers cannot -- now produce -- they've</p> <p>8 gotten approval from the FDA to market and produce</p> <p>9 the generic equivalent of your drug, then if I</p> <p>10 came along and then manufactured that -- your same</p> <p>11 chemical entity and I signed a rebate agreement</p> <p>12 with the feds, my drug could -- pharmacy providers</p> <p>13 could receive payment for my drug product without</p> <p>14 me having to enter into an agreement with</p> <p>15 supplemental rebate, versus if Randy were to</p> <p>16 manufacture the same drug but not have entered</p> <p>17 into a supplemental rebate, even though he's</p> <p>18 producing the same product, we would not pay for</p> <p>19 his drug, unless it were approved, prior approved</p> <p>20 through the -- or unless it was approved through</p> <p>21 the TAR process.</p> <p>22 Q. Okay.</p>

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<p>1 A. So in that case there's no supplemental 2 rebate from the manufacturer and their drug is 3 covered and essentially on the list. 4 MR. GLASER: For the record, I don't 5 produce drugs. 6 THE WITNESS: Nor do I. 7 MR. CYR: Nor do I. 8 Q. Let me see if I can state that another 9 way. And you can correct me if my understanding 10 is wrong. 11 If a drug is a single-source drug and 12 there's -- and it's contracted onto the Medi-Cal 13 contract list and it subsequently becomes a multi- 14 source drug, it loses its exclusivity and another 15 generic -- a generic manufacturer comes in and 16 starts producing that same drug, the generic 17 manufacturer -- the generic version of the drug 18 can be added to the Medi-Cal Contract Drug List 19 without a supplemental rebate paid to the program; 20 is that correct? 21 A. If you were to look at the Medi-Cal List 22 of Contract Drugs, drugs are listed according to</p>	<p>1 Q. Okay. 2 A. It's not a preferred manufacturer list. 3 There's no such list. 4 Q. Okay. What was the list that you -- I'm 5 sorry. 6 A. The list is a list of manufacturers by 7 label or code who have signed an agreement with 8 the feds for rebate. They've signed a rebate 9 agreement with the feds, so they agree to pay the 10 HCFA Rebate or the CMS Rebate, whichever term you 11 want to use. They're interchangeable. 12 MR. CYR: How much time do we have left 13 on the tape? 14 THE VIDEOGRAPHER: One hour, three 15 minutes. 16 MR. CYR: Okay. 17 Q. I'd like to jump back to your employment 18 history with the Department. 19 You said your primary responsibilities 20 were handling manufacturer petitions -- or 21 processing and reviewing manufacturer petitions 22 and handling or drafting the OILs that were sent</p>
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<p>1 their generic name, they are not listed by brand 2 name. 3 Q. Okay. 4 A. And so once a chemical entity is on the 5 list, so long as the manufacturer, again, has 6 signed a federal rebate agreement, then we'll pay 7 for -- we don't have to physically add that drug 8 to the list. The manufacturer has to be on the 9 list of approved manufacturers. There is a 10 separate list in the provider manual of authorized 11 manufacturer/labeler codes -- 12 Q. Okay. 13 A. -- and that's what drives whether or not 14 we pay for that product. 15 Q. Okay. But does the generic manufacturer 16 have to pay a supplemental rebate to Medi-Cal to 17 be on the Contract Drug List? 18 A. No. 19 Q. Okay. Does the manufacturer have to pay 20 a supplemental rebate to the Medi-Cal program to 21 be on the preferred manufacturer list? 22 A. No.</p>	<p>1 to the fiscal intermediary concerning drugs that 2 were added to the Contract Drug List. 3 A. And also manufacturers who were added to 4 the authorized manufacturer list. 5 Q. Okay. And you held that position until 6 about 2004; is that correct? 7 A. No, that's not correct. I've had the 8 same position. My duties have changed. 9 Q. Okay. 10 A. The position is the same. 11 Q. Okay. But your duties changed around 12 2003, 2004; is that correct? 13 A. My duties changed over time -- 14 Q. Okay. 15 A. -- from the time I began working for the 16 Pharmacy Contracting Section until now. So there 17 isn't a finite date of when I transitioned from 18 one set of duties to another. They shift. 19 Q. Okay. I understand. 20 What new responsibilities -- or what 21 responsibilities have you gotten -- strike that. 22 What other responsibilities have you</p>

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<p style="text-align: right;">Page 118</p> <p>1 been given since you joined the Department, apart 2 from those two that we discussed? 3 A. Sometimes duties would include analysis 4 of legislation. And those are as assigned. 5 Sometimes, again as assigned, it's 6 responding to letters from beneficiaries or the 7 legislature on behalf of a beneficiary or 8 providers when they have concerns about the drug 9 program or issues that they need clarification on. 10 Sometimes the duties include working 11 towards implementation of programs or processes 12 that are legislatively or statutory mandated once 13 the legislation has passed. 14 Sometimes it's providing clarification 15 to field office staff or other departmental staff 16 on policy-related -- pharmacy policy-related 17 issues. 18 Sometimes it's analysis of whether or 19 not the Department -- or the Pharmacy Division can 20 implement new programs to improve quality of care. 21 So where I reside now is within the 22 policy branch.</p>	<p style="text-align: right;">Page 120</p> <p>1 to you? 2 A. No. 3 MR. CYR: No. 4 I think this is probably a good time to 5 break for lunch. 6 THE VIDEOGRAPHER: We're now going off 7 the video record approximately 12:28. 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. Okay. 2 A. And so it's policy-related issues. 3 Q. Okay. And I take it you don't review 4 manufacturer petitions for inclusion on the 5 Contract Drug List anymore? 6 A. No. 7 Q. Okay. Do you know approximately when 8 that responsibility was kind of phased out of your 9 duties? 10 A. Probably around 2003. Whenever we moved 11 from -- whenever we moved to the east end, which 12 2003, 2002 -- 2003, I think right around there -- 13 Q. Okay. 14 A. -- I was starting to transition out of 15 that and focus more on policy. 16 Q. And is your supervisor still Kevin 17 Gorospe? 18 A. Yes. 19 Q. Okay. And so it's just been Len Terra 20 and then Kevin Gorospe? 21 A. Yes. 22 Q. Okay. Do you have anyone that reports</p>	<p style="text-align: right;">Page 121</p> <p>1 AFTERNOON SESSION 2 3 (Exhibit Ahrens 002 and Exhibit 4 Ahrens 003 marked) 5 THE VIDEOGRAPHER: We're back on the 6 video record at approximately 1:40. 7 MR. CYR: Q. Welcome back, Ms. Ahrens. 8 As I mentioned at the beginning of the 9 deposition, one of the defendants that I represent 10 -- or two of the defendants that I represent in 11 this action are drug manufacturers named Dey, 12 Inc., and Dey, L.P. Are you familiar with either 13 of those companies? 14 A. Familiar in that I know they exist. 15 Q. Okay. Have you ever had any 16 communications with anyone from Dey? 17 A. None that I recall. 18 Q. Okay. There are two entities, Dey, L.P. 19 and Dey, Inc., but I'll refer to them 20 interchangeably as "Dey." Will you understand 21 what I'm talking about? 22 A. Yes.</p>

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<p>1 Q. Okay. Do you know, did Dey have any</p> <p>2 drugs on the Medi-Cal List of Contract Drugs while</p> <p>3 you were in the position of reviewing</p> <p>4 manufacturers' petitions?</p> <p>5 A. I wouldn't know.</p> <p>6 Q. Okay. Do you recall ever reviewing a</p> <p>7 petition that was submitted by Dey?</p> <p>8 A. No.</p> <p>9 Q. Okay. I'll represent to you that my</p> <p>10 client specializes in the manufacture of</p> <p>11 inhalation drugs, including albuterol sulfate and</p> <p>12 ipatroprium bromide.</p> <p>13 Were the manufacturers' petitions you</p> <p>14 reviewed, were they limited to a certain category</p> <p>15 or class of drugs?</p> <p>16 A. No.</p> <p>17 Q. Okay. So you wouldn't have not reviewed</p> <p>18 a Dey manufacturer petition just because it was --</p> <p>19 just because Dey made inhalation drugs?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. Would you take a look at what's</p> <p>22 been marked as Exhibit 2. You've had a chance to</p>	<p>1 satisfactorily addressed the criteria so that the</p> <p>2 Department has determined that their product, the</p> <p>3 unit-dose albuterol sulfate inhalation solution</p> <p>4 0.083 percent, would be an appropriate addition to</p> <p>5 the list. It says that the Department is in the</p> <p>6 process of securing the contract from Dey, L.P.,</p> <p>7 and that the Department would notify provider of</p> <p>8 the addition of their product -- that would be to</p> <p>9 the list -- and that the manufacturer should not</p> <p>10 actively promote their drug as an addition to the</p> <p>11 list prior to publication or notification of the</p> <p>12 private providers by the Medi-Cal bulletin.</p> <p>13 Q. Okay. Some of the names of the people</p> <p>14 on the document. Do you recognize the name</p> <p>15 Marianne Lewis?</p> <p>16 A. Yes.</p> <p>17 Q. And who is that?</p> <p>18 A. She was Chief of the Medi-Cal</p> <p>19 Contracting Section.</p> <p>20 Q. Okay.</p> <p>21 A. At the time.</p> <p>22 Q. I think you said you were -- that was</p>
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<p>1 review that?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Do you recognize this document?</p> <p>4 A. No.</p> <p>5 Q. Okay. Have you seen documents like this</p> <p>6 before?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Have you written documents like</p> <p>9 this before?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. What information is being</p> <p>12 conveyed in this document?</p> <p>13 MR. GLASER: Object as to form.</p> <p>14 MR. CYR: Q. Based on your review of</p> <p>15 the document.</p> <p>16 A. As you read the letter, the letter says</p> <p>17 that the letter is to inform you -- meaning Joan</p> <p>18 Salyer of Dey, L.P. -- of the Department's</p> <p>19 decision to add unit-dose albuterol sulfate</p> <p>20 inhalation solution 0.083 percent to the list.</p> <p>21 The letter says that it was evaluated on the</p> <p>22 statutorily required criteria and that Dey</p>	<p>1 the section you were in.</p> <p>2 A. Correct.</p> <p>3 Q. Well, there's no date on this document.</p> <p>4 Strike that.</p> <p>5 Len Terra is bcc'd on this document, and</p> <p>6 I think you said that he was your supervisor.</p> <p>7 A. Correct.</p> <p>8 Q. Who is Dr. Mike Namba?</p> <p>9 A. At that time, if Len Terra is here as a</p> <p>10 supervisor, then Mike Namba would have been one of</p> <p>11 the Pharmaceutical Consultant II Specialists on</p> <p>12 staff.</p> <p>13 Q. Okay. And were Mr. Namba's duties</p> <p>14 similar to yours?</p> <p>15 A. Yes.</p> <p>16 Q. And so he reviewed petitions submitted</p> <p>17 by manufacturers for inclusion on the Medi-Cal</p> <p>18 Drug Contract List?</p> <p>19 A. Correct.</p> <p>20 Q. I think you stated that, as the letter</p> <p>21 reads, the Medi-Cal contracting unit had reviewed</p> <p>22 Dey's submission for inclusion on the Contract</p>

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<p>1 Drug List and had approved the submission and were</p> <p>2 going to add Dey's albuterol sulfate onto the</p> <p>3 list. Is that correct?</p> <p>4 A. It actually says that the Department has</p> <p>5 conducted a review, not that the unit has</p> <p>6 conducted the review.</p> <p>7 Q. Okay.</p> <p>8 A. And it says it's the Department's</p> <p>9 decision.</p> <p>10 Q. Okay. Not just the unit's decision, but</p> <p>11 the Department's decision?</p> <p>12 A. Right.</p> <p>13 Q. Okay. And it notes that the review</p> <p>14 consisted of a therapeutic and economic analysis.</p> <p>15 Is that a reference to the criteria we were</p> <p>16 discussing before?</p> <p>17 A. I don't know.</p> <p>18 The criteria is -- it says that the drug</p> <p>19 was evaluated on the statutorily required five</p> <p>20 criteria.</p> <p>21 Q. Okay. And that's a reference to the</p> <p>22 criteria that we were discussing before; is that</p>	<p>1 with the Department to provide that agreement --</p> <p>2 to provide the rebate?</p> <p>3 A. When they agreed to provide a rebate,</p> <p>4 they would enter into a contract for the rebate,</p> <p>5 yes.</p> <p>6 Q. Okay. Did you ever review those rebates</p> <p>7 -- or did you ever review those contracts?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Is this contract a supplemental</p> <p>10 rebate agreement contract?</p> <p>11 A. No.</p> <p>12 Q. Could you take a look at -- on the</p> <p>13 second page, Article III, the first paragraph</p> <p>14 under "ARTICLE III - CONTRACTOR'S</p> <p>15 RESPONSIBILITIES."</p> <p>16 A. Um-hmm.</p> <p>17 Q. And that paragraph reads "Contractor</p> <p>18 will provide the Department a Rebate for the</p> <p>19 Covered Product(s), which includes the HCFA Basic</p> <p>20 Rebate and HCFA CPI Rebate, as appropriate. The</p> <p>21 HCFA Rebates represent the discount obtained by</p> <p>22 multiplying the units of the Covered Product(s)</p>
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<p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And that would include the cost</p> <p>4 criteria; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. If you would take a look at</p> <p>7 what's been marked as Ahrens Exhibit 3.</p> <p>8 You've had a chance to review this</p> <p>9 before we went on the record; is that correct?</p> <p>10 If you want to take some more time to</p> <p>11 review it now, please do.</p> <p>12 A. I wanted to check one thing.</p> <p>13 Q. Okay. Do you recognize this document?</p> <p>14 A. No.</p> <p>15 Q. Have you seen documents like this in</p> <p>16 your time at the Department?</p> <p>17 A. Not that I recall.</p> <p>18 Q. As part of the petition process that we</p> <p>19 discussed before the lunch break, when a</p> <p>20 manufacturer would agree to provide the Department</p> <p>21 with a supplemental rebate, would they enter into</p> <p>22 an agreement with the Department -- a contract</p>	<p>1 reimbursed by the Department in the preceding</p> <p>2 quarter by the per Unit Rebate Amount provided to</p> <p>3 the Department by HCFA. HCFA will calculate the</p> <p>4 rebate amount in accordance with Contractor's HCFA</p> <p>5 Agreement. Contractor's obligation for Rebates</p> <p>6 will continue for the duration of the Contractor's</p> <p>7 HCFA Agreement." Did I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And let's go back and look at the</p> <p>10 first page and the first paragraph on that page</p> <p>11 under the caption that reads "MEDI-CAL DRUG REBATE</p> <p>12 AGREEMENT." The first sentence of that paragraph</p> <p>13 defines Dey, L.P., Pharmaceuticals Corporation as</p> <p>14 Contractor; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. So if you flip back to the second</p> <p>17 page and that paragraph we were looking at before,</p> <p>18 essentially this paragraph is saying that Dey,</p> <p>19 L.P. will pay rebates to Medi-Cal pursuant to</p> <p>20 Dey, L.P.'s rebate agreement; is that correct?</p> <p>21 A. It says that the contractor will provide</p> <p>22 the Department a rebate for the covered products,</p>

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<p>1 which includes the HCFA Basic Rebate plus the HCFA 2 CPI Rebate as appropriate.</p> <p>3 Q. Okay. And if you look at the first 4 page, there's a definition of the HCFA Basic 5 Rebate there at paragraph 2.4 on the bottom of the 6 page.</p> <p>7 A. Correct. Um-hmm.</p> <p>8 Q. And that's the -- that's defined as the 9 quarterly payment by the contractor pursuant to 10 the contractor's HCFA agreement made in accordance 11 with Section 1927(c)(1) or Section 1927(c)(3) of 12 the Social Security Act? Did I read that 13 correctly?</p> <p>14 A. Yes.</p> <p>15 Q. And you understand that paragraph to be 16 referring to the HCFA Rebate payments that we were 17 discussing before lunch?</p> <p>18 A. It refers to a portion of the HCFA 19 Rebate payments.</p> <p>20 Q. Okay.</p> <p>21 A. But --</p> <p>22 Q. Is there another portion of the HCFA</p>	<p>1 Rebate amount; is that correct?</p> <p>2 A. When you look at this contract and you 3 go back to Article II, 2.7 defines rebate. So 4 there's a definition for HCFA CPI Rebate, HCFA 5 Basic Rebate and a definition for rebate. So in 6 the first part of 3.1 it says that the contractor 7 will provide the Department a rebate.</p> <p>8 And looking at 2.7, it says rebate means 9 with respect to the covered products the quarterly 10 payment paid by -- payment by contractor pursuant 11 to Article III, Section 3.1 of this agreement and 12 it also means equalization payment as used in the 13 Welfare and Institutions Code Section 14105.31(c).</p> <p>14 Q. Okay. Looking at that paragraph, what 15 is meant by the equalization payment as used in 16 Welfare and Institutions Code Section 14105.31(c)?</p> <p>17 A. Without having 14105.31(c) in front of 18 me, I cannot tell you that.</p> <p>19 Q. Okay.</p> <p>20 A. I don't know.</p> <p>21 Q. Going back to paragraph 3.1, is there 22 any other rebate amount other than the HCFA Basic</p>
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<p>1 Rebate payments?</p> <p>2 A. The HCFA Rebate is the best price plus 3 any CPI penalties. So it's the sum of those two. 4 It isn't just the basic rebate plus -- it isn't 5 just the basic rebate. If there is a CPI penalty, 6 that becomes part of the rebate.</p> <p>7 Q. Okay. Is that for -- the basic rebate 8 which would be the best price plus the CPI amount, 9 is that just for single-source drugs?</p> <p>10 A. The basic rebate is the basic rebate. 11 The CPI Rebate is separate. The HCFA Rebate is 12 the sum of the two.</p> <p>13 Q. Okay.</p> <p>14 A. And I don't know the CMS Rebate 15 agreement for multi-source drugs to know whether 16 or not they're subject to a CPI penalty.</p> <p>17 I know that single-source drugs are 18 subject to CPI penalty.</p> <p>19 Q. Okay. But going back to paragraph 3.1, 20 the only -- the only rebate amounts that the 21 contractor is agreeing to pay in paragraph 3.1 are 22 the HCFA Basic Rebate amount and the HCFA CPI</p>	<p>1 Rebate or the HCFA CPI Rebate that's referenced in 2 that paragraph?</p> <p>3 A. Not according to anything contained 4 within this contract.</p> <p>5 Q. Okay. You've had a chance to review 6 this contract. Is there anything else in this 7 contract that you would see that would obligate 8 the -- obligate Dey to pay an amount other than 9 the HCFA Basic Rebate and the HCFA CPI Rebate --</p> <p>10 A. No.</p> <p>11 Q. -- to Medi-Cal?</p> <p>12 Do you know why Medi-Cal would enter 13 into an agreement with Dey that didn't obligate 14 Dey to pay anything other than the -- strike that.</p> <p>15 Do you know why Medi-Cal would enter 16 into a drug rebate agreement with Dey that didn't 17 obligate Dey to pay anything other than the HCFA 18 Basic Rebate and the HCFA CPI Rebate?</p> <p>19 A. Why Medi-Cal would do that?</p> <p>20 Q. Um-hmm.</p> <p>21 A. Because upon evaluation or review of the 22 drug for addition to the Medi-Cal List of Contract</p>

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<p>1 Drugs, the drug met the information provided in 2 addition to the evaluation conducted by the 3 pharmacists doing the review, the determination 4 was made that all five drug evaluation criteria 5 were met. 6 Q. Okay. 7 A. So that this is a HCFA-only rebate 8 agreement. Doesn't -- it's not -- it's not 9 inappropriate. 10 Q. Okay. Let me ask you a question that 11 might clarify it. 12 For Dey's albuterol sulfate to be 13 included on the Medi-Cal drug rebate agreement, 14 Dey would have to have a rebate agreement with 15 Medi-Cal, even though Dey was not agreeing to pay 16 Medi-Cal a supplemental rebate agreement; is that 17 correct? 18 A. No, that is not correct. 19 Q. Okay. Why is that not correct? 20 A. It's the Medi-Cal List of Contract 21 Drugs, what it says is that we'll have a contract 22 -- this is a contract, and the contract says that</p>	<p>1 payment for this product. 2 Q. Okay. So the criteria could be met for 3 inclusion on the Medi-Cal drug contract list 4 though the manufacturer was not agreeing to pay 5 Medi-Cal a supplemental rebate? 6 A. The rebate alone doesn't determine 7 whether or not a drug gets added to, retained on, 8 or deleted from the list. 9 Q. Okay. 10 A. It's whether or not criteria are met. 11 And because they fail one criteria 12 doesn't necessarily mean that they will or will 13 not be added to the list if the other criteria -- 14 you know, they could be successful, for example -- 15 I'll give you an example. They could be 16 successful in meeting a cost criterion and 17 efficacy and maybe even safety but fail criteria 18 for misuse potential or essential need -- and/or 19 essential need, which might result in the decision 20 to not add the drug to the list, to have it remain 21 on prior authorization status. 22 Q. Okay. So, now would it be required that</p>
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<p>1 so long as -- it says that we will add the 2 contractor's covered product to the Medi-Cal List 3 of Contract Drugs. Whether or not we have a 4 supplemental -- the important thing is whether or 5 not the criterion are met. And, as I stated 6 previously, sometimes the petitions to add a drug 7 to the list could be initiated by the Department. 8 Q. Okay. 9 A. Sometimes -- most often they were 10 initiated by the manufacturer. 11 However, after the creation of the Medi- 12 Cal List of Contract Drugs and pursuant to the 13 requirements in the W&I Code, drugs cannot be 14 added to the list unless a contract is secured 15 with the manufacturer, with a manufacturer for 16 that product. 17 Q. Okay. 18 A. So the criteria are met, however that 19 determination was made through the analysis, a 20 contract was generated, an OIL would have been 21 generated, a bulletin would have gone out, and 22 providers then would have been able to receive</p>	<p>1 the drug meet all the criteria? 2 A. Yes. 3 Q. Okay. But provided that the drug met 4 all the criteria, you would issue a contract and 5 the drug would be -- or you would enter into 6 agreement and the drug would be added to the list? 7 A. Yes. 8 Q. Okay. You can put this document aside 9 now. 10 Mark this as Ahrens 4. 11 (Exhibit Ahrens 004 marked) 12 MR. CYR: Q. Ms. Ahrens, if you want to 13 just take a minute to review this document. 14 While you do that, I'll describe it for 15 the record. This is a document that was produced 16 to us by the State of California, it bears the 17 Bates stamp CAAG/DHS-E0050204, 50205 and 50206. 18 Have you had an opportunity to review 19 the document? 20 A. Um-hmm. 21 Q. Do you recognize this document? 22 A. No. But it's addressed to me, so must</p>

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<p>1 be mine.</p> <p>2 Q. Okay. Who is Stephen Berk?</p> <p>3 A. He was a pharmacist that was on staff</p> <p>4 with our program at one point in time.</p> <p>5 Q. Okay. And if you look at the document,</p> <p>6 it reads -- or the first page of the e-mail, which</p> <p>7 is an e-mail, reads "Katherine, Mike sent me a</p> <p>8 note indicating you are going to handle</p> <p>9 albuterol."</p> <p>10 First of all, do you know, is "Mike"</p> <p>11 there, is that a reference to Mike Namba?</p> <p>12 A. Probably. Could be.</p> <p>13 Q. Okay. But you can't say for certain?</p> <p>14 A. No.</p> <p>15 Q. Okay.</p> <p>16 A. We -- no, I can't.</p> <p>17 Q. It says Mike sent a note to me</p> <p>18 indicating that you are going to handle albuterol.</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. What did you understand him to mean by</p> <p>22 saying you were going to handle albuterol?</p>	<p>1 drug evaluation analysis in applying the five</p> <p>2 criteria to the assessment, to the evaluation.</p> <p>3 Q. Okay. And which of the five criteria</p> <p>4 would this be used for?</p> <p>5 A. Cost.</p> <p>6 Q. Okay. And how would you use this to</p> <p>7 assess the cost criteria?</p> <p>8 A. Because I have no recollection of this</p> <p>9 particular assignment, I don't know what -- I</p> <p>10 don't know what the assignment was at the time, I</p> <p>11 don't know if it were a product that the</p> <p>12 Department initiated a request or initiated the</p> <p>13 petition to start the process of evaluating the</p> <p>14 drug if we had identified an essential need for a</p> <p>15 unit-dose product on the list --</p> <p>16 Q. Okay.</p> <p>17 A. -- and then subsequently sought a</p> <p>18 manufacturer to enter into an agreement so that we</p> <p>19 would have met all the conditions for adding a</p> <p>20 drug to the list or if it were a petition that was</p> <p>21 initiated by Dey.</p> <p>22 So when I'm looking at the spreadsheet</p>
Page 139	Page 141
<p>1 A. This would be an assumption on my part,</p> <p>2 but since Steve is sending me this e-mail, it says</p> <p>3 here "Here is the spreadsheet I had for the</p> <p>4 albuterols, let me know if you have any</p> <p>5 questions." So for whatever reason, Steve was</p> <p>6 having to pass along his assignment on albuterol</p> <p>7 to another pharmacist. And what stage he was at</p> <p>8 in the evaluation, I don't know, I don't recall.</p> <p>9 So apparently what he was doing was passing it on</p> <p>10 to me. He's saying that Mike sent him a note</p> <p>11 saying that I was going to handle albuterol.</p> <p>12 Q. Okay. Could you take a look at the</p> <p>13 second and third pages of the document.</p> <p>14 A. Um-hmm.</p> <p>15 Q. Do you recognize these pages?</p> <p>16 A. I don't recognize the pages.</p> <p>17 Q. Okay. Have you seen documents like this</p> <p>18 before?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And what would you use a document</p> <p>21 like this for?</p> <p>22 A. It would be used in -- as part of the</p>	<p>1 just as it is, because of how the criteria are</p> <p>2 defined, I would -- I'm wondering where the other</p> <p>3 comparators are. So I don't know if this -- I</p> <p>4 didn't create this spreadsheet so -- or I don't</p> <p>5 recall having created this spreadsheet, so I can't</p> <p>6 answer your question I don't think.</p> <p>7 Q. Would you use spreadsheets like this to</p> <p>8 do -- to assess the cost criteria when examining</p> <p>9 manufacturers' petitions? Not this specific</p> <p>10 spreadsheet.</p> <p>11 A. Right.</p> <p>12 Q. I know you don't recall using this</p> <p>13 particular spreadsheet.</p> <p>14 A. Right, right.</p> <p>15 Q. But would you use spreadsheets that had</p> <p>16 a similar layout this?</p> <p>17 A. Similar, yes.</p> <p>18 Q. And -- similar. Would they be different</p> <p>19 from this spreadsheet, this particular spreadsheet</p> <p>20 in any certain way?</p> <p>21 A. The headers on this spreadsheet, if I</p> <p>22 were doing a drug evaluating -- doing a fiscal on</p>

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<p style="text-align: right;">Page 142</p> <p>1 our drug according to the criteria, the headers 2 wouldn't necessarily be exactly like this. 3 Q. Okay. But would they be -- the basic 4 layout of the document would be similar; is that 5 correct? 6 A. It would be similar. 7 Q. Okay. Could you explain how you would 8 use this document to do the -- to assess the cost 9 criteria? 10 A. I wouldn't use it by itself. 11 Q. What else would you use with it? 12 A. Again, because the regs define cost as a 13 comparison of other products or -- this is just -- 14 it looks -- I can't tell if it's -- this looks 15 like it's for an inhalation device, which is -- 16 it's not the same as the inhalation solution that 17 was referred to in the prior documents. This is 18 for an inhaler. 19 Q. Okay. Let me just interrupt you there 20 and clear up the record. I'm not suggesting that 21 this was the same -- we're talking about the same 22 product that we were talking about when we looked</p>	<p style="text-align: right;">Page 144</p> <p>1 manufacturer know that we have initiated a review 2 of their product in response to their petition and 3 that as part of the process that we would be 4 sending a letter to the Medi-Cal Contract Drug 5 Advisory Committee for their evaluation and 6 recommendation. 7 Q. And what's the specific drug that's 8 being referenced in this letter? 9 A. DuoNeb. 10 Q. Okay. And the letter is directed to 11 Russell Johnston at Dey, L.P.; is that correct? 12 A. Correct. 13 Q. Okay. If you turn to the second page, 14 the second paragraph in the letter reads "Send any 15 correspondence to the pharmaceutical consultant 16 assigned to coordinate the review of this drug at 17 the following address" and then it gives your 18 name; is that correct? 19 A. That's correct. 20 Q. All right. And then an address which I 21 assume was your office at the time. 22 A. Correct.</p>
<p style="text-align: right;">Page 143</p> <p>1 at the previous exhibits. 2 A. And -- it does have the HFA. I don't 3 even know what we're evaluating here. I don't 4 know what drug we're looking at. I don't know the 5 purpose of this spreadsheet. So I mean there's 6 not enough information here for me to -- I don't 7 know what the assessment is here. 8 Q. Okay. Well, let's put that document 9 aside. 10 Would you mark this as Ahrens 5. 11 (Exhibit Ahrens 005 marked) 12 MR. CYR: Q. Ms. Ahrens, why don't you 13 take a moment to review this document and I'll 14 introduce it for the record. 15 This is a document that was produced to 16 us by the State of California, Bates-stamped 17 CAAG/DHS-E0049939, 49940. 18 A. Okay. 19 Q. Do you recognize this document? 20 A. Yes. 21 Q. What is this document? 22 A. This is a document that lets a</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. Okay. Do you recall being involved in 2 the review of this drug? 3 A. Yes. 4 Q. Okay. Just looking at the letter, do 5 you recall having any communications with Russell 6 Johnston? 7 A. No. 8 Q. Okay. Do you recall having 9 communication with anyone at Dey in regard to this 10 review? 11 A. Yes. But I couldn't tell you any name 12 or anything other than -- 13 Q. Okay. 14 A. -- other than that there was contact. 15 Q. Okay. And the name below the signature 16 line is "Douglas Hillblom"? 17 A. Correct. 18 Q. Who is Douglas Hillblom? 19 A. Chief of the Medi-Cal Contracting 20 Section. 21 Q. He was Chief of the Contracting Section 22 at the time this letter was written?</p>

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<p style="text-align: right;">Page 146</p> <p>1 A. Correct.</p> <p>2 Q. Which is September 6, 2002?</p> <p>3 A. Apparently.</p> <p>4 Q. Why don't you put that to the side for</p> <p>5 now.</p> <p>6 And just to be clear, I think you had</p> <p>7 said this before, but I just wanted to make sure,</p> <p>8 that this was in response to a petition that was</p> <p>9 submitted by a manufacturer; is that correct?</p> <p>10 A. Correct.</p> <p>11 Q. So this wasn't one of those instances</p> <p>12 where Medi-Cal decided to initiate a review?</p> <p>13 A. Correct.</p> <p>14 Q. Or to solicit a petition from the</p> <p>15 manufacturer; correct?</p> <p>16 A. Not to solicit a petition. We don't</p> <p>17 solicit petitions.</p> <p>18 Q. Okay.</p> <p>19 A. That's not a correct statement.</p> <p>20 Q. Well, what would --</p> <p>21 A. It would have been to secure a contract</p> <p>22 for addition of the drug to the list.</p>	<p style="text-align: right;">Page 148</p> <p>1 by you to Diane Furukawa?</p> <p>2 A. Correct.</p> <p>3 Q. Who is Diane Furukawa?</p> <p>4 A. Currently -- well, she's a pharmacist.</p> <p>5 Currently she's Chief of the Medi-Cal Drug</p> <p>6 Contracting Branch.</p> <p>7 Q. Okay. What was her position at the time</p> <p>8 this e-mail was sent?</p> <p>9 A. I don't know.</p> <p>10 Q. In March of 2004.</p> <p>11 A. I don't know.</p> <p>12 Q. Okay. Do you know why you would be</p> <p>13 sending her this e-mail?</p> <p>14 A. I don't recall.</p> <p>15 Q. Okay. And the bottom portion of the e-</p> <p>16 mail is an e-mail from someone named John</p> <p>17 Valencia?</p> <p>18 A. Correct.</p> <p>19 Q. To you; is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. Do you know who John Valencia is?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. Okay. But Medi-Cal would have initiated</p> <p>2 the process?</p> <p>3 A. The review.</p> <p>4 Q. The review.</p> <p>5 A. Yes.</p> <p>6 MR. CYR: Okay. Would you mark this as</p> <p>7 Ahrens Exhibit 6.</p> <p>8 (Exhibit Ahrens 006 marked)</p> <p>9 MR. CYR: Q. Would you take a moment to</p> <p>10 review this document, and while you're looking at</p> <p>11 it I'll introduce it for the record.</p> <p>12 This is a document that was produced to</p> <p>13 us by the State of California, Bates-stamped</p> <p>14 CAAG/DHS0068016 to 68019.</p> <p>15 A. Okay.</p> <p>16 Q. You've had a chance to review this</p> <p>17 document?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recognize this document?</p> <p>20 A. No.</p> <p>21 Q. Looking at the first page of the</p> <p>22 document, it appears to be an e-mail that was sent</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. Who is John Valencia?</p> <p>2 A. He's an attorney with Wilke Fleury.</p> <p>3 Q. And Mr. Valencia is conveying some</p> <p>4 information to you; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. What is he conveying?</p> <p>7 A. He's conveying -- well, he's providing</p> <p>8 Dey's offer on three products, the DuoNeb, AccuNeb</p> <p>9 .63 milligram and AccuNeb 1.25 milligram, and</p> <p>10 attaching a file with numbers that the</p> <p>11 manufacturer would have provided.</p> <p>12 Q. Okay. And looking at the first page of</p> <p>13 the e-mail again, Mr. Valencia uses the term</p> <p>14 "Fixed Net Program Cost"?</p> <p>15 A. Correct.</p> <p>16 Q. Do you know what that's in reference to?</p> <p>17 A. The offer would be in reference to net</p> <p>18 cost for these three products.</p> <p>19 Q. Okay.</p> <p>20 A. So when we discussed earlier the types</p> <p>21 of supplemental rebate we would negotiate -- or</p> <p>22 the offers that we would receive, this is one of</p>

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<p style="text-align: right;">Page 150</p> <p>1 those types.</p> <p>2 Q. Okay. And just so I understand,</p> <p>3 essentially Mr. Valencia on behalf of Dey is</p> <p>4 offering a rebate -- to pay a rebate -- or I guess</p> <p>5 Dey is offering -- strike that.</p> <p>6 Day is offering to pay a rebate in the</p> <p>7 amount such that Medi-Cal's net cost for, for</p> <p>8 example, DuoNeb would be \$1.03?</p> <p>9 A. That's what it says on the front of the</p> <p>10 e-mail, so, yes, that appears to be their offer on</p> <p>11 March 4th, 2004.</p> <p>12 Q. Okay. In looking at the -- looking at</p> <p>13 the second page, there's a line that begins</p> <p>14 "Actual AMP 2003"?</p> <p>15 A. Correct.</p> <p>16 Q. And then it gives a row of amounts under</p> <p>17 columns that look like they're headed "Q1", "Q2,"</p> <p>18 "Q3" and "Q4"; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. Is it your understanding that that's the</p> <p>21 AMP for DuoNeb?</p> <p>22 A. It would be my understanding that this</p>	<p style="text-align: right;">Page 152</p> <p>1 for each National Drug Code (NDC) number for this</p> <p>2 product and the calendar quarter the AMP is from."</p> <p>3 Did I read that correctly?</p> <p>4 A. Correct.</p> <p>5 Q. So in other words, the Medi-Cal program</p> <p>6 was asking Dey for its AMPs?</p> <p>7 A. Correct.</p> <p>8 Q. Okay.</p> <p>9 A. For this review.</p> <p>10 Q. For this review.</p> <p>11 Would that be typical, that you would</p> <p>12 ask a manufacturer for their AMPs for a review?</p> <p>13 A. Yes.</p> <p>14 MR. CYR: Why don't we take a break and</p> <p>15 change tape now.</p> <p>16 THE VIDEOGRAPHER: This concludes tape 2</p> <p>17 in today's deposition. We are now going off</p> <p>18 record at approximately 2:33.</p> <p>19 (Exhibit Ahrens 007 marked)</p> <p>20 THE VIDEOGRAPHER: This is the beginning</p> <p>21 of tape 3 in today's video deposition of Katherine</p> <p>22 Ahrens. We are now back on the video record at</p>
<p style="text-align: right;">Page 151</p> <p>1 is the AMP that Dey is reporting for DuoNeb to us</p> <p>2 --</p> <p>3 Q. Okay.</p> <p>4 A. -- to Medi-Cal at that point in time.</p> <p>5 Q. Okay. Why would Dey be providing the</p> <p>6 AMPs to you in association with this offer?</p> <p>7 A. I don't know if it was contained in the</p> <p>8 initial letter that went out to Dey that says we</p> <p>9 were initiating the review where there's a</p> <p>10 paragraph in there that says that they want to</p> <p>11 meet with us, be prepared with your therapeutic</p> <p>12 presentation or clinical presentation along with</p> <p>13 any business proposal that they might want to</p> <p>14 present and it's necessary to or appropriate or</p> <p>15 whatever the verbiage was there to include AMP.</p> <p>16 Q. Can we go back and look at Exhibit 5 for</p> <p>17 a minute. If we turn to the second page of</p> <p>18 Exhibit 5 and we read that first paragraph.</p> <p>19 A. Correct.</p> <p>20 Q. It reads "Also, include the drug's FDA</p> <p>21 classification (Chemical Type and Treatment</p> <p>22 Potential), the Average Manufacturer's Price (AMP)</p>	<p style="text-align: right;">Page 153</p> <p>1 approximately 2:57.</p> <p>2 MR. CYR: Q. Ms. Ahrens, welcome back.</p> <p>3 I'm going to change gears now. The</p> <p>4 court reporter has handed you what's been marked</p> <p>5 as Ahrens Exhibit 7. Have you had a chance to</p> <p>6 review that document?</p> <p>7 A. No.</p> <p>8 Q. Okay. Why don't you take the time to</p> <p>9 just give it a look-over.</p> <p>10 And while you're doing that, just for</p> <p>11 the record, this is a document Bates-stamped</p> <p>12 CAAG/DHS-E0017242 to 17261. It was produced to us</p> <p>13 in this action by the State of California.</p> <p>14 You can spend as much time with the</p> <p>15 document as you need, Ms. Ahrens, but I'm going to</p> <p>16 be asking you about page 4, page 5, page 11, and</p> <p>17 the last page of the document, page 19, and the</p> <p>18 first page of the document as well.</p> <p>19 Have you had a chance to review?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Looking at the first page of this</p> <p>22 document, do you recognize this document? I'm</p>

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<p>1 sorry. The first page of the exhibit, this page.</p> <p>2 A. No, I don't recall it.</p> <p>3 Q. Okay. But looking at the -- looking at</p> <p>4 the -- this appears to be an e-mail with an</p> <p>5 attachment; is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. And looking at the attachment to the e-</p> <p>8 mail, do you recognize this document?</p> <p>9 A. No.</p> <p>10 Q. Okay. Let's go back to the first page.</p> <p>11 This appears to be an e-mail from Vic Walker to a</p> <p>12 number of people and, based on the acronyms after</p> <p>13 their names, they all appear to be employees of</p> <p>14 the Department; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Who is Vic Walker?</p> <p>17 A. He's a pharmacist in our program.</p> <p>18 Q. Okay. And if you go down and look at</p> <p>19 the body of the e-mail, the e-mail reads -- the</p> <p>20 message reads "Richard Cudlip sent me the attached</p> <p>21 document. I think that you may find it useful,</p> <p>22 especially for training or answering questions.</p>	<p>1 manufacturer by retail pharmacies or by</p> <p>2 wholesalers for drugs distributed to the retail</p> <p>3 pharmacies.' AMP is based on sales to the retail</p> <p>4 sector, which generally pays higher prices than</p> <p>5 other purchasing sectors."</p> <p>6 Did I read those two sentences</p> <p>7 correctly?</p> <p>8 A. Yes.</p> <p>9 Q. Is that consistent with your</p> <p>10 understanding of what AMP is?</p> <p>11 A. Not really.</p> <p>12 Q. How is your understanding of AMP</p> <p>13 different?</p> <p>14 A. My understanding of AMP is that it is a</p> <p>15 calculation performed by the manufacturer and what</p> <p>16 gets included in that calculation or what entities</p> <p>17 have done business with that are included in the</p> <p>18 calculation may or may not vary between</p> <p>19 manufacturers and is something that they have the</p> <p>20 ability to adjust should they determine that the</p> <p>21 entities that they include or exclude in their</p> <p>22 calculation needs to be modified.</p>
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<p>1 Thanks Richard! Vic."</p> <p>2 Do you know who Richard Cudlip is?</p> <p>3 A. Richard Cudlip was a pharmacist on</p> <p>4 contract through EDS who worked briefly with our -</p> <p>5 - with the Pharmacy Benefits Group.</p> <p>6 Q. Mr. Walker says that he thinks you may</p> <p>7 find this document useful, especially for training</p> <p>8 or answering questions.</p> <p>9 Do you recall using this document for</p> <p>10 training purposes?</p> <p>11 A. No.</p> <p>12 Q. Okay. Do you recall using documents</p> <p>13 like this for training purposes?</p> <p>14 A. No.</p> <p>15 Q. Okay. Let's turn to page 4 of this</p> <p>16 document, which is Bates-stamped CAAG/DHS-</p> <p>17 E0017246. The top of the page reads "Average</p> <p>18 Manufacturer's Price" and then it gives a</p> <p>19 definition, and the definition reads AMP is the</p> <p>20 price paid to -- rather, quote -- strike that.</p> <p>21 Let me start that again.</p> <p>22 "AMP is "The average price paid to a</p>	<p>1 So there's no -- the way this reads,</p> <p>2 it's as if it were a standard calculation used by</p> <p>3 all manufacturers consistently, but we know from</p> <p>4 experience that the calculations are not</p> <p>5 consistent because the methodology is not defined</p> <p>6 or clearly stated in federal regs or statute.</p> <p>7 Q. Okay. Looking a little farther down the</p> <p>8 page -- actually, strike that.</p> <p>9 Let's move on to page 5.</p> <p>10 Page 5 at the top of the page reads</p> <p>11 "Average Wholesale Price (AWP)" and then it gives</p> <p>12 a definition of Average Wholesale Price and that</p> <p>13 definition is "AWP is the price assigned to a drug</p> <p>14 and is listed in the Red Book, First DataBank or</p> <p>15 Medispan. AWP operates as a suggested list price</p> <p>16 and is typically not what is paid as buyers may</p> <p>17 negotiate lower prices through the inclusion of</p> <p>18 discounts, rebates or free goods."</p> <p>19 Is that consistent with your</p> <p>20 understanding of the term "AWP," that definition</p> <p>21 that I just read?</p> <p>22 A. It is consistent in that I understand it</p>

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<p>1 to be the price assigned to a drug as listed in</p> <p>2 the different compendia, Red Book, First DataBank</p> <p>3 or Medispan, and that the number still is based on</p> <p>4 what the manufacturer reports.</p> <p>5 Q. But it's not consistent with your</p> <p>6 understanding that AWP operates as a suggested</p> <p>7 list price?</p> <p>8 A. No.</p> <p>9 Q. Do you think AWP operates as something</p> <p>10 other than a suggested list price?</p> <p>11 A. My -- or my working assumption whenever</p> <p>12 I would look at AWP or the number that we got from</p> <p>13 AWP minus whatever percentage was in place at the</p> <p>14 time, since AWP was the base, my assumption was</p> <p>15 that that number was an accurate representation of</p> <p>16 the Average Wholesale Price according to</p> <p>17 information that the manufacturer would have</p> <p>18 provided to the compendia, who then published the</p> <p>19 AWP. But it still marries back to what</p> <p>20 information -- because only the manufacturer knows</p> <p>21 what they sell product for, no one has access to</p> <p>22 contracts that they may have negotiated, we</p>	<p>1 the manufacturer provides to the repositories, I</p> <p>2 cannot say a hundred percent across the board that</p> <p>3 that would be the case for every single</p> <p>4 manufacturer, so I can't say that I understand</p> <p>5 that it's not an accurate -- across the board</p> <p>6 nationwide, outside of how it's applied in Medi-</p> <p>7 Cal, I can't agree with that.</p> <p>8 MR. CYR: Q. Okay. Going down a little</p> <p>9 farther on the page, under the -- it says in bold</p> <p>10 "How Calculated" and then it reads "According to</p> <p>11 the Red Book, AWP pricing information is 'based on</p> <p>12 data obtained from manufacturers, distributors and</p> <p>13 other suppliers.' There are no requirements or</p> <p>14 conventions that AWP reflect the price of any</p> <p>15 actual sale of drugs by a manufacturer, nor is it</p> <p>16 defined in law or regulations."</p> <p>17 Is that statement consistent with your</p> <p>18 understanding of how manufacturers derive -- or</p> <p>19 how -- strike that -- how Red Book and other</p> <p>20 pricing publications derive the AWP's that they</p> <p>21 publish?</p> <p>22 A. I don't know how each entity -- I'm</p>
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<p>1 wouldn't know. It's dependent on us believing or</p> <p>2 trusting that the manufacturer has reported</p> <p>3 correctly.</p> <p>4 So to say that it operates as a</p> <p>5 suggested list price, that statement to me is the</p> <p>6 opinion of the Academy of Managed Care Pharmacy.</p> <p>7 Q. Okay. Setting aside your working</p> <p>8 assumption of AWP as it's used in California's</p> <p>9 reimbursement methodology, do you understand that</p> <p>10 the AWP's that are listed in Red Book, First</p> <p>11 DataBank and Medispan reflect -- strike that.</p> <p>12 Setting aside your working assumption of</p> <p>13 AWP as it's used in the Medi-Cal reimbursement</p> <p>14 formula, do you understand today that AWP as</p> <p>15 listed in Red Book, First DataBank or MediSpan</p> <p>16 does not represent -- or I should say the AWP's</p> <p>17 that are listed in Red Book and First DataBank and</p> <p>18 MediSpan do not represent actual averages of</p> <p>19 prices paid for pharmaceuticals?</p> <p>20 MR. GLASER: Object as to form.</p> <p>21 THE WITNESS: Again, because the</p> <p>22 calculation is dependent upon the information that</p>	<p>1 aware of how First DataBank has performed that</p> <p>2 calculation to arrive at AWP, but I'm not aware of</p> <p>3 how the other -- MediSpan or Red Book arrives at</p> <p>4 their calculations -- or determinations of AWP.</p> <p>5 Q. The second sentence in that paragraph,</p> <p>6 "There are no requirements or conventions that AWP</p> <p>7 reflect the price of any actual sale of drugs by a</p> <p>8 manufacturer, nor is it defined in law or</p> <p>9 regulations," is that accurate with your</p> <p>10 understanding of AWP -- or consistent with your</p> <p>11 understanding of AWP?</p> <p>12 A. No. I think that it again is the</p> <p>13 opinion of Academy of Managed Care Pharmacy.</p> <p>14 My understanding of it is that it's a</p> <p>15 number born out of what manufacturers report. You</p> <p>16 know, so if -- if they're not reporting</p> <p>17 accurately, how would we know that?</p> <p>18 Q. The last clause in that second sentence,</p> <p>19 "nor is it defined in law or regulations," is that</p> <p>20 consistent with your understanding?</p> <p>21 A. I'm not aware of all the law, so no.</p> <p>22 Q. Do you know of any law or regulation</p>

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<p style="text-align: right;">Page 162</p> <p>1 that defines AWP?</p> <p>2 A. I think that our law, when it speaks to</p> <p>3 reimbursement -- or maybe it's in regs -- speaks</p> <p>4 to the AWP as reported in whatever the compendia</p> <p>5 is, it ties it in that way, but not in terms of</p> <p>6 how the manufacturer or how any given entity is to</p> <p>7 report to arrive at AWP.</p> <p>8 Q. Okay. Let's go on to page -- actually,</p> <p>9 I know I didn't tell you that we were going to</p> <p>10 look at this page, but could we look at page 10.</p> <p>11 A. Sure.</p> <p>12 Q. Why don't you just take a moment to look</p> <p>13 it over.</p> <p>14 A. Okay.</p> <p>15 Q. Page 10, at the top of the page it reads</p> <p>16 "Retail or Usual and Customary (U&C) Price" and</p> <p>17 then it gives a definition, and the definition</p> <p>18 reads "U&C is defined as the pharmacy's selling</p> <p>19 price to individual consumers. The price includes</p> <p>20 the cost of the drug and the pharmacy's mark-up.</p> <p>21 The mark-up includes allowances for business</p> <p>22 operating costs, e.g., rent, utilities, employee</p>	<p style="text-align: right;">Page 164</p> <p>1 bold "How Calculated" U&C is set by each</p> <p>2 individual pharmacy; correct?</p> <p>3 A. Correct.</p> <p>4 Q. And that's consistent with your</p> <p>5 understanding of how that's set; correct?</p> <p>6 A. Correct.</p> <p>7 Q. Let's look at page 11. The bold heading</p> <p>8 at the top of this page reads "Wholesale</p> <p>9 Acquisition Cost," or WAC, and it gives a</p> <p>10 definition, and the definition reads "WAC is the</p> <p>11 cost at which wholesalers purchase drug products</p> <p>12 from the manufacturer." This price is defined as</p> <p>13 the list price" -- I'm sorry. "This price is</p> <p>14 defined as the 'list price established by</p> <p>15 manufacturers for sales to wholesalers.' The drug</p> <p>16 manufacturers provide this information. WAC, like</p> <p>17 the Average Wholesale Price (AWP - defined on page</p> <p>18 5), is a suggested price, and is typically not</p> <p>19 what is paid."</p> <p>20 First of all, are you familiar with the</p> <p>21 term "Wholesale Acquisition Cost"?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">Page 163</p> <p>1 wages/benefits, etc., and dispensing services."</p> <p>2 Did I read that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Is that consistent with your</p> <p>5 understanding of the term "usual and customary</p> <p>6 charge"?</p> <p>7 A. The portion that is consistent with my</p> <p>8 understanding of usual and customary is the</p> <p>9 portion that states that it is defined as the</p> <p>10 pharmacy's selling price to individual consumers.</p> <p>11 The portion that states that the price</p> <p>12 includes the cost of the drug plus pharmacy mark-</p> <p>13 up and the mark-up would include allowances for</p> <p>14 all those other portions is not -- I don't -- I</p> <p>15 wouldn't know -- or don't -- I'm not familiar with</p> <p>16 what an individual pharmacy, if it's an</p> <p>17 independent or a retail pharmacy, how they would</p> <p>18 arrive at their usual and customary.</p> <p>19 Q. Okay. And that's because the pharmacy</p> <p>20 is the one that sets that; right?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. And in fact it says under the</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. Okay. Is this definition given here</p> <p>2 consistent with your understanding of that term?</p> <p>3 A. Yes, up to the first and second</p> <p>4 sentences or third, drug manufacturers provide</p> <p>5 information.</p> <p>6 Q. Okay.</p> <p>7 A. To say that -- I can't say that I agree</p> <p>8 or would know that it is typically what is not</p> <p>9 paid.</p> <p>10 Q. Okay.</p> <p>11 A. Because I don't know what their</p> <p>12 contracts were.</p> <p>13 Q. Okay. And then going down a little</p> <p>14 farther on the page, under the "How Calculated"</p> <p>15 segment, it reads "WAC is a proprietary price set</p> <p>16 by the pharmaceutical manufacturers. Each</p> <p>17 manufacturer assigns its own price using its own</p> <p>18 formula. First DataBank and MediSpan report WAC</p> <p>19 prices in their drug information databases, and</p> <p>20 they are also listed in the Red Book." Did I read</p> <p>21 that paragraph correctly?</p> <p>22 A. Yes.</p>

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<p style="text-align: right;">Page 166</p> <p>1 Q. Is that consistent with your 2 understanding of how WAC is calculated? 3 A. It is my understanding that it is a 4 price that is established by the manufacturer, 5 yes. 6 Q. And is it also your understanding that 7 it's available in First DataBank and MediSpan? 8 A. Because our reimbursement methodologies 9 to pharmacies is not based on WAC, it's not a 10 number that I ever looked at, so I can't say that 11 I was aware of it being in First DataBank. I know 12 that I've seen WAC in Red Book, but again that's 13 not a data source that we use. 14 Q. Do you know, does California have access 15 to WAC prices? 16 A. Well, I'm sure they would, California 17 would to the extent that they have access to any 18 of these repositories. 19 Q. And you use -- I believe California uses 20 First DataBank. 21 A. Medi-Cal uses -- 22 Q. Or rather Medi-Cal uses First DataBank;</p>	<p style="text-align: right;">Page 168</p> <p>1 I shouldn't say I haven't seen it 2 before. I don't recall having seen it. 3 MR. CYR: Q. Okay? You've had a chance 4 to look at it? 5 A. Yes. 6 MR. CYR: For the record, this is State 7 of California's Objections and Responses to 8 Defendant Abbott Laboratories' First Set of 9 Interrogatories. It was served in this action on 10 December 21st, 2007. 11 Q. If you turn to page 14, interrogatory 8, 12 it reads "Identify all actions taken by You and 13 Ven-A-Care to insure the preservation of evidence, 14 witness testimony, data or other information 15 relevant to or discoverable in this litigation, 16 including, without limitation, the date on which 17 the action was taken, the persons who took the 18 action, the specific direction to preserve 19 evidence, the persons to whom it was communicated, 20 and the parties to the communication relating to 21 the preservation of evidence." 22 Did I read that correctly?</p>
<p style="text-align: right;">Page 167</p> <p>1 correct? 2 A. Yes. 3 Q. Okay. Why don't we set that document 4 aside for now. 5 Would you mark this as 8. 6 (Exhibit Ahrens 008 marked) 7 MR. CYR: Q. Do you recognize this 8 document, Ms. Ahrens? 9 Take a moment to look it over. 10 You can look over as much of the 11 document as you like, but I'm going to ask you 12 about California's response to interrogatory 8, 13 which begins on page 14; interrogatory 16, which 14 begins on -- and interrogatory 16, which begins on 15 page 36. 16 A. Interrogatory 8? 17 Q. 8, yeah. 18 MR. GLASER: And 16? 19 MR. CYR: And 16, yeah. 20 THE WITNESS: I've not seen this 21 document before. This document does not look 22 familiar to me.</p>	<p style="text-align: right;">Page 169</p> <p>1 A. Yes. 2 Q. Okay. You had mentioned before that you 3 had assisted in preparing responses to 4 interrogatories in this action; is that correct? 5 A. Correct. 6 Q. Is interrogatory 8 that I just read into 7 the record, is that one of the interrogatories 8 that you assisted in preparing a response to? 9 A. No. 10 Q. No? 11 Have you had a chance to review the 12 response to interrogatory number 8? 13 A. Yes. 14 Q. Okay. Do you recall ever getting any 15 instructions from anyone to preserve documents in 16 connection with this case? 17 A. I recall having gotten or received 18 information about this case. But as far as 19 specific instructions related to document 20 retention for this case, I don't recall 21 specifically having received that -- or not 22 having. I know we were noticed that we were going</p>

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<p style="text-align: right;">Page 170</p> <p>1 to be involved in this. But as far as the</p> <p>2 document retention goes, I don't recall any</p> <p>3 specific e-mail that said -- mentioned the type of</p> <p>4 documents to retain or not destroy.</p> <p>5 Q. Okay. If you look at paragraph number</p> <p>6 6.</p> <p>7 A. On?</p> <p>8 Q. On page 17. I'm sorry.</p> <p>9 A. Okay.</p> <p>10 Q. Paragraph 6 reads "On December 9, 2005</p> <p>11 OLS sent an e-mail notice to all the branches and</p> <p>12 offices listed in paragraph Number 5 above</p> <p>13 notifying them of the pending litigation and the</p> <p>14 need to preserve all documents that could be</p> <p>15 discoverable." Did I read that paragraph</p> <p>16 correctly?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Do you have an understanding of</p> <p>19 what's meant by the acronym "OLS" here?</p> <p>20 A. Yes.</p> <p>21 Q. What is your understanding?</p> <p>22 A. Office of Legal Services.</p>	<p style="text-align: right;">Page 172</p> <p>1 A. I remember receiving an e-mail. I could</p> <p>2 not tell you when.</p> <p>3 Q. Okay.</p> <p>4 A. And that was the whole thing, when we</p> <p>5 were put on notice that this lawsuit or the</p> <p>6 potential, I do remember discussions around that</p> <p>7 and the need to preserve documents.</p> <p>8 But we preserve documents anyway.</p> <p>9 You've seen how old some of these documents are in</p> <p>10 our pile. So it's like they're not telling us</p> <p>11 anything we don't already do.</p> <p>12 Q. Well, you preserve documents in the</p> <p>13 normal course of business; right?</p> <p>14 A. Right.</p> <p>15 Q. Okay. But sometimes documents -- strike</p> <p>16 that.</p> <p>17 Do you recall -- you had mentioned</p> <p>18 conversations regarding the case. Do you recall</p> <p>19 if you -- were those conversations -- I might have</p> <p>20 missed this. Did those conversations entail the</p> <p>21 need to preserve documents?</p> <p>22 A. I don't remember.</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. And if you look above that paragraph 5,</p> <p>2 it lists a number of departments --</p> <p>3 MR. GLASER: Are you on paragraph 6?</p> <p>4 MR. CYR: I'm on paragraph 5 now on page</p> <p>5 16.</p> <p>6 Q. I guess it lists a number of units or</p> <p>7 divisions within the Department of Health</p> <p>8 Services. Is that correct?</p> <p>9 A. It lists divisions and sections and</p> <p>10 branches, yes, different offices.</p> <p>11 Q. Okay. Is the Department -- or the</p> <p>12 branch or unit that you were in on December 2nd,</p> <p>13 2005 -- rather December 9th, 2005, is that</p> <p>14 included on this list?</p> <p>15 A. Yes.</p> <p>16 Q. And what department is that? Or which</p> <p>17 unit is that, rather?</p> <p>18 A. Pharmacy Policy.</p> <p>19 Q. Okay. Reading paragraph 6 in</p> <p>20 conjunction with the list on paragraph 5, does</p> <p>21 that refresh your recollection about receiving an</p> <p>22 e-mail to preserve documents?</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. Okay. Do you remember gathering</p> <p>2 documents as part of -- in response to this case?</p> <p>3 A. Oh, yes.</p> <p>4 Q. Okay. Where did you look for documents</p> <p>5 that you gathered in relation to this case?</p> <p>6 A. Anywhere documents may have been stored</p> <p>7 that were responsive to the request for</p> <p>8 production. So within our section it would have -</p> <p>9 - each pharmacist was responsible for producing</p> <p>10 responsive documents.</p> <p>11 Q. Okay.</p> <p>12 A. So however many that there are of us</p> <p>13 that would have been involved with any of the --</p> <p>14 as defined in the request for production would</p> <p>15 have produced documents.</p> <p>16 I personally didn't go through</p> <p>17 everybody's files to find documents.</p> <p>18 Q. Okay. Did you go through your files to</p> <p>19 look for documents?</p> <p>20 A. Yes.</p> <p>21 Q. Files stored in your office?</p> <p>22 A. Yes.</p>

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<p style="text-align: right;">Page 174</p> <p>1 Q. Okay. Do you also store some of your</p> <p>2 files in another location?</p> <p>3 A. No. On the computer.</p> <p>4 Q. Okay.</p> <p>5 A. But no.</p> <p>6 Q. Do you recall going through your e-mails</p> <p>7 stored on your computer?</p> <p>8 A. No.</p> <p>9 Q. Do you know if that was done?</p> <p>10 A. Yeah.</p> <p>11 Q. Someone else went through it?</p> <p>12 A. Someone else went through the e-mails.</p> <p>13 I think our -- well, our machines were all</p> <p>14 downloaded, weren't they, for e-mail? I don't</p> <p>15 recall. I mean we didn't -- I didn't have to go</p> <p>16 through each and every e-mail.</p> <p>17 Q. Okay. Do you recall when the download</p> <p>18 of e-mails took place?</p> <p>19 A. No.</p> <p>20 Q. Okay. Do you recall about how many</p> <p>21 documents you determined were responsive to the --</p> <p>22 A. No.</p>	<p style="text-align: right;">Page 176</p> <p>1 But otherwise, you can answer the</p> <p>2 question.</p> <p>3 MR. CYR: I'll qualify it.</p> <p>4 Q. Any questions that were posed to you by</p> <p>5 someone other than an attorney.</p> <p>6 A. No.</p> <p>7 Q. All right. Let's turn to page 36 of the</p> <p>8 interrogatories.</p> <p>9 And you've had a chance to review this</p> <p>10 interrogatory and the response?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And at the top of the page, under</p> <p>13 the heading "INTERROGATORY NUMBER 16," it reads</p> <p>14 "Identify all persons currently or formerly</p> <p>15 employed by You or serving as a contractor to You</p> <p>16 with any knowledge that at any time the</p> <p>17 reimbursement for a pharmaceutical drug product</p> <p>18 based on AWP or Direct Price might result in</p> <p>19 reimbursement to a provider in excess of actual</p> <p>20 acquisition cost."</p> <p>21 And then there's a -- the response</p> <p>22 includes some objections and then it gives a list</p>
<p style="text-align: right;">Page 175</p> <p>1 Q. No?</p> <p>2 Can you give an approximation?</p> <p>3 A. Thousands.</p> <p>4 Q. Thousands? Thousands of pages or</p> <p>5 thousands --</p> <p>6 A. Thousands of pages.</p> <p>7 Q. Okay. Of just your documents?</p> <p>8 A. I don't know. Mine may have been</p> <p>9 several hundred. I worked there for a long time.</p> <p>10 Q. Okay.</p> <p>11 A. So I can't say how many of mine were</p> <p>12 responsive.</p> <p>13 Q. Okay. Do you know approximately how</p> <p>14 many pages of your documents -- documents within</p> <p>15 your possession were responsive?</p> <p>16 A. No.</p> <p>17 Q. Okay. Did anyone ask you any questions</p> <p>18 about the documents that you gathered?</p> <p>19 MR. GLASER: I'm going to object and</p> <p>20 caution the witness not to give any information</p> <p>21 that you might have shared with your counsel at</p> <p>22 DHCS or the Attorney General's office.</p>	<p style="text-align: right;">Page 177</p> <p>1 of names and addresses; is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. I'm sorry. Did I read the interrogatory</p> <p>4 correctly?</p> <p>5 A. I believe so.</p> <p>6 Q. Okay.</p> <p>7 MR. GLASER: And, Brendan, I'm just</p> <p>8 going to object and reassert the same objections</p> <p>9 that are in our original response.</p> <p>10 MR. CYR: Okay. Understood.</p> <p>11 Q. If you turn to page 37 and the third</p> <p>12 name down, that's you, isn't it?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Do you have knowledge that at any</p> <p>15 point in time the reimbursement for a</p> <p>16 pharmaceutical drug product based on AWP or Direct</p> <p>17 Price might result in reimbursement to a provider</p> <p>18 in excess of actual acquisition cost?</p> <p>19 MR. GLASER: Same objections.</p> <p>20 MR. CYR: Before you answer that, Randy,</p> <p>21 do you just want to have any question I ask about</p> <p>22 this be a standing objection?</p>

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<p>1 MR. GLASER: Yes.</p> <p>2 MR. CYR: Okay.</p> <p>3 Q. You can go ahead.</p> <p>4 A. The way this interrogatory was</p> <p>5 structured, it says with any knowledge at any time</p> <p>6 that might. That word "might," like we knew, for</p> <p>7 example, on some of the generic products</p> <p>8 especially, that acquisition costs from pharmacy</p> <p>9 providers versus AWP were significantly different.</p> <p>10 Q. Okay.</p> <p>11 A. So -- but generally speaking -- and we</p> <p>12 might have knowledge of that information on a</p> <p>13 drug-by-drug basis. But generally, no. The</p> <p>14 potential always exists because reimbursement --</p> <p>15 accuracy of reimbursement is contingent on the</p> <p>16 accuracy of the baseline that we use, which is</p> <p>17 AWP, which is born out of what manufacturers</p> <p>18 report.</p> <p>19 Q. Okay. I want to backtrack to one point</p> <p>20 in your response. You said you had knowledge that</p> <p>21 there was a significant difference between -- I</p> <p>22 think I'm saying that correctly, there was a</p>	<p>1 A. Periodically, not of any high frequency.</p> <p>2 Q. Okay. But could you -- to go back to</p> <p>3 the question I asked, would the prices be -- would</p> <p>4 the pharmacist's actual acquisition cost be</p> <p>5 significantly lower than the published AWP?</p> <p>6 A. One drug comes to mind.</p> <p>7 Q. Okay.</p> <p>8 A. And which is not a product involved in</p> <p>9 this litigation --</p> <p>10 Q. Okay.</p> <p>11 A. -- and the difference was more than</p> <p>12 tenfold for this one provider.</p> <p>13 Q. Okay. What was the product that comes</p> <p>14 to your mind?</p> <p>15 A. It's a product that was single source</p> <p>16 that became generic.</p> <p>17 Q. Okay.</p> <p>18 A. And the complaint was -- sometimes what</p> <p>19 we will do with a drug is that we might look at</p> <p>20 what our net cost is, especially on newly generic</p> <p>21 products.</p> <p>22 Q. Okay.</p>
Page 179	Page 181
<p>1 significant difference between the AWP and what a</p> <p>2 provider could acquire a generic version of a drug</p> <p>3 for.</p> <p>4 A. Correct.</p> <p>5 Q. Could you quantify that, significant?</p> <p>6 First let me withdraw that question and</p> <p>7 ask a different question.</p> <p>8 Would the price that the pharmacist</p> <p>9 could acquire a generic drug for be significantly</p> <p>10 lower -- the provider's actual acquisition cost</p> <p>11 for the generic drug be significantly lower than</p> <p>12 the AWP?</p> <p>13 A. I would have to quantify that in that</p> <p>14 the reports that we would get were anecdotal. So</p> <p>15 it might be from a pharmacy provider who shared</p> <p>16 the information with one of us.</p> <p>17 Q. Okay.</p> <p>18 A. So in that respect, that's how we would</p> <p>19 acquire that knowledge, the anecdotal reports that</p> <p>20 we would get, nothing formal.</p> <p>21 Q. Okay. But you would receive reports</p> <p>22 from --</p>	<p>1 A. When a single-source drug loses its</p> <p>2 patent and becomes generic, it's not uncommon for</p> <p>3 our net cost after CMS or basic rebate would be</p> <p>4 lower than our net cost for a generic, under which</p> <p>5 scenario we would label the code, restrict the</p> <p>6 product to the manufacturer that was of a lower</p> <p>7 cost. That's something administratively that we</p> <p>8 are able to do.</p> <p>9 Q. Okay.</p> <p>10 A. And as a generalization, the only time</p> <p>11 we might look is when a drug was going off patent</p> <p>12 and had high utilization.</p> <p>13 Q. Okay. Going back to my question,</p> <p>14 though, do you recall the name of the drug that</p> <p>15 you referenced before where there was a tenfold</p> <p>16 difference between acquisition cost and the</p> <p>17 published AWP?</p> <p>18 A. Fluoxetine. It's not a part of this --</p> <p>19 it's not a drug, though, that's manufactured by</p> <p>20 the companies that you represent. It's not an</p> <p>21 inhalation product.</p> <p>22 Q. Okay. Just for the record, I also</p>

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<p>1 represent a company called Mylan Pharmaceuticals, 2 Inc. -- 3 A. Okay. 4 Q. -- and they manufacture drugs besides 5 inhalation products. 6 Do you recall when you heard about that 7 significant spread -- or the significant 8 difference between the provider's acquisition cost 9 and the published AWP for fluoxetine? 10 A. The year? No. 11 Q. Was it maybe 10 years ago? 12 A. I can't say. 13 It would have correlated with when the 14 single-source manufacturer's patent expired and 15 when generics appeared. 16 Q. Okay. 17 A. So I don't know that date or the time 18 frame. 19 Q. Okay. Do you recall when you first 20 began hearing anecdotal evidence regarding 21 significant spreads between -- or significant 22 differences between provider acquisition cost and</p>	<p>1 drugs -- 2 A. No. 3 Q. -- regarding which you heard information 4 like this? 5 A. No. 6 Q. Okay. You can put that document aside 7 for now. 8 I want to jump back to some testimony 9 you gave earlier this morning regarding when you 10 worked at Department of Developmental Services, 11 specifically with regards to ordering drugs. You 12 had mentioned one of the -- when it came down to 13 replenish the facility you worked at, their supply 14 of drugs, one of -- you would sometimes acquire 15 drugs from -- through a Department of General 16 Services contract. Is that correct? 17 A. Um-hmm. 18 Q. Okay. Do you know how the Department of 19 General Services -- or do you know how the 20 Department of General Services contract operated? 21 A. No. 22 Q. Do you know if the Department of General</p>
Page 183	Page 185
<p>1 published AWP's for generic drugs? 2 A. When I first started hearing it? 3 Q. Yes. 4 A. No. 5 Q. Was it more than five years ago? 6 A. Could have been. How long did ago did 7 fluoxetine go off patent? It probably was. 8 Q. Okay. Could it have been 10 years ago? 9 A. Again it depends upon when fluoxetine 10 would have gone off patent. I don't know. That 11 was the first time -- that was the first time that 12 I saw anything with that amount of spread. 13 Q. Okay. So fluoxetine was that instance? 14 A. Correct. 15 Q. And if we were to go look at -- go 16 backtrack and figure out when fluoxetine went off 17 patent, that would be around the time you first 18 learned that -- 19 A. Approximately. 20 Q. Approximately. Okay. 21 A. Approximately. 22 Q. Do you recall any other drugs, specific</p>	<p>1 Services bought drugs directly from manufacturers? 2 A. No. 3 Q. Okay. Do you have any knowledge about 4 how that -- 5 A. No. I have absolutely no knowledge. I 6 didn't then, nor do I now have knowledge of how 7 they contract. 8 Q. Okay. To your knowledge, has the 9 Department of Health Services ever purchased drugs 10 directly from manufacturers? Actually, strike 11 that. 12 Has the Medi-Cal program ever purchased 13 drugs directly from manufacturers? 14 A. No. 15 Q. You have no knowledge of -- 16 A. No. We reimburse providers. 17 To purchase something implies that 18 you're taking possession of the product in my 19 mind. And I cannot ever think of a time when we 20 would have taken possession of a product for 21 distribution. There's no reason for it. 22 Q. Okay.</p>

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<p style="text-align: right;">Page 186</p> <p>1 A. There's no reason for it. We do not</p> <p>2 dispense. We don't fill prescriptions.</p> <p>3 We provide reimbursement to providers</p> <p>4 who perform that function.</p> <p>5 Q. Okay. So in other words, you rely on</p> <p>6 providers to actually dispense the drugs to the</p> <p>7 Medicaid beneficiaries; correct?</p> <p>8 A. We rely on providers who have the</p> <p>9 authority to do that, yes.</p> <p>10 Q. Okay.</p> <p>11 A. To dispense.</p> <p>12 MR. CYR: Okay. Could we go off the</p> <p>13 record for a moment?</p> <p>14 MR. GLASER: Sure.</p> <p>15 THE VIDEOGRAPHER: We are going off the</p> <p>16 video record at approximately 3:53.</p> <p>17 We're now back on the video record at</p> <p>18 approximately four o'clock.</p> <p>19 MR. CYR: Q. Ms. Ahrens, I just have a</p> <p>20 few more questions.</p> <p>21 Changing gears, are you familiar with</p> <p>22 the term "ASP," or Average Sales Price?</p>	<p style="text-align: right;">Page 188</p> <p>1 something that we were looking into.</p> <p>2 Q. Okay. It was part of the law at one</p> <p>3 time; is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. Do you know approximately the</p> <p>6 time period?</p> <p>7 A. I think it was sometime around 2003,</p> <p>8 2004.</p> <p>9 Q. Okay.</p> <p>10 A. Somewhere in that neighborhood.</p> <p>11 Q. Okay. And it's no longer --</p> <p>12 A. It's no longer part of the law.</p> <p>13 Q. Okay. Do you have an understanding of</p> <p>14 why it's no longer part of the law?</p> <p>15 A. Yes, I do.</p> <p>16 Q. What is that understanding?</p> <p>17 A. I think I previously had stated that</p> <p>18 whenever legislation was passed or it became law</p> <p>19 that impacted our program, then we would have to</p> <p>20 move toward implementing that piece of the</p> <p>21 legislation. And so one of the requirements --</p> <p>22 well, the requirement -- or the language that was</p>
<p style="text-align: right;">Page 187</p> <p>1 A. Yes.</p> <p>2 Q. Okay. What is your understanding of</p> <p>3 that term?</p> <p>4 A. It is a number used in Medicare for</p> <p>5 reimbursement of certain injectables, drugs that</p> <p>6 are a part of Part B for -- Part B is for like</p> <p>7 office visits, physician office visits, so they'll</p> <p>8 use that. And they're for certain drugs.</p> <p>9 And then ASP was also a base -- it was a</p> <p>10 term that we had in our law, and I don't recall</p> <p>11 the exact verbiage of the law, but I believe it</p> <p>12 was a number that we were going to require</p> <p>13 manufacturers to report to us and from there</p> <p>14 perhaps modify some of our reimbursement</p> <p>15 methodologies to pharmacy providers.</p> <p>16 Q. Okay. Would ASP be used the same way</p> <p>17 that AWP is now, as another possible reimbursement</p> <p>18 basis?</p> <p>19 A. It may have been had it -- it's no</p> <p>20 longer in law.</p> <p>21 Q. Okay.</p> <p>22 A. So that possibility existed. It was</p>	<p style="text-align: right;">Page 189</p> <p>1 in the law around ASP would have required the</p> <p>2 manufacturers to report ASP to the Department.</p> <p>3 And so while we were in the process of trying to</p> <p>4 define what would be included in that calculation</p> <p>5 and looking --</p> <p>6 Q. Sorry.</p> <p>7 A. And I believe at that time, too, what we</p> <p>8 were looking at was how ASP calculation was</p> <p>9 defined in the Medicare portion of the law to</p> <p>10 assess what would be appropriate for our purposes</p> <p>11 -- or relevant to our purposes, and in the midst</p> <p>12 of all of that we received notice -- and I don't</p> <p>13 recall how that notice came through, but that the</p> <p>14 feds were working on changing how -- or changing</p> <p>15 FULs or were moving towards an AMP-based</p> <p>16 methodology for establishing FULs or some such</p> <p>17 thing.</p> <p>18 So for us to have a reporting</p> <p>19 requirement that was unique just to California and</p> <p>20 different from anybody else was not something that</p> <p>21 -- and setting up that system, including the</p> <p>22 methodology for reporting and the repository to</p>

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<p style="text-align: right;">Page 190</p> <p>1 store it and maintain it and all of that wasn't as 2 -- in light of how the feds were moving, just 3 didn't seem like the prudent way to go. 4 Q. Okay. 5 A. So for that reason we dumped it, dumped 6 the -- the process just stopped. 7 MR. CYR: I think at this time I have no 8 further questions for the witness. 9 And subject to subsequent document 10 production by the State of California or any 11 questions that Mr. Glaser has on direct or any of 12 the other attorneys representing plaintiffs in 13 this action have on direct, I'm going to pass the 14 witness. 15 16 EXAMINATION 17 BY MS. BERWANGER: 18 Q. Mrs. Ahrens, again, for the record, my 19 name is Lara Berwanger. I represent the defendant 20 Sandoz, Inc., in this action. 21 Have you heard of Sandoz, Inc.? 22 A. Yes.</p>	<p style="text-align: right;">Page 192</p> <p>1 company you're referring to. 2 A. And I realize that companies may have 3 different -- to me it looks all the same. If it's 4 Sandoz, Inc., Sandoz, LLC, Sandoz whatever -- 5 Q. Sure. 6 A. I don't know how to differentiate that. 7 That to me is legalese, it doesn't make a lot of 8 sense to me. 9 Q. My client in this case, Sandoz, Inc., is 10 a manufacturer of generic products that it markets 11 and sells in the United States. Does that make 12 things a little bit clearer? 13 A. It makes it a little bit clearer. 14 So as far as conversations go -- and I 15 don't recall the circumstance under which I would 16 have had this conversation, but I do recall having 17 a conversation with the generic arm of Sandoz, but 18 I don't recall what the drug was or the topic or 19 any of that. 20 Q. Do you know when this conversation took 21 place? 22 A. No.</p>
<p style="text-align: right;">Page 191</p> <p>1 Q. And are you aware that Sandoz, Inc., 2 used to be known as Geneva Pharmaceuticals, Inc.? 3 A. No. 4 Q. I'll represent to you that Geneva 5 Pharmaceuticals, Inc., is the former name of 6 Sandoz, Inc., and that upon the change in name, 7 nothing else changed about the company, just the 8 change in name. 9 Can you agree with me that sometimes 10 when I ask you questions I may use "Sandoz," I may 11 use "Geneva," but I'm speaking about the same 12 company? 13 A. Okay. 14 Q. Have you ever spoken to anyone at 15 Sandoz? 16 A. As the generic or -- see, this is where 17 I get confused. 18 Q. Sure. 19 A. And for all my career I've pronounced it 20 Sandoz, so pardon me if I do that. 21 Q. It's an ongoing debate. 22 That's fine. I'll understand what</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. Was it within the last five years? 2 A. I wouldn't know. You know, how fast 3 does time go by? I can't even begin to estimate. 4 My timeline -- my marker is from when we 5 moved to the east end versus when we were in the 6 other building. And I don't know if that 7 conversation happened while at the east end or 8 while at 7th and P, so I cannot give you a time. 9 Q. Could you say whether it was this 10 decade? 11 A. No. I couldn't even say that much. 12 Q. Can you remember who you spoke with? 13 A. No. 14 Q. Can you remember anything that was said? 15 A. No. 16 Q. Can you remember whether pricing was 17 discussed? 18 A. No. 19 Q. Do you know whether there was more than 20 one conversation that you had with anyone from 21 Sandoz? 22 A. No, I don't remember.</p>

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<p>1 Q. Do you know if you took notes of the</p> <p>2 conversation?</p> <p>3 A. I don't remember.</p> <p>4 Q. If you did take notes, would they likely</p> <p>5 have been notes that you typed up?</p> <p>6 A. No. I don't type up my notes typically.</p> <p>7 Q. Typically, do you have handwritten notes</p> <p>8 when you have conversations with manufacturers?</p> <p>9 A. Not typically.</p> <p>10 Q. Typically, do you take notes at all?</p> <p>11 A. Not typically.</p> <p>12 Q. Do you know whether there was any</p> <p>13 written correspondence in advance of the</p> <p>14 conversation or to follow up on anything from the</p> <p>15 conversation?</p> <p>16 A. No.</p> <p>17 Q. Is it fair to say that sitting here</p> <p>18 today you have absolutely no recollection of any</p> <p>19 of the circumstances of the conversation? Other</p> <p>20 than the fact that it took place.</p> <p>21 A. I think that's how I stated it in the</p> <p>22 beginning, that all that I remember is that I, for</p>	<p>1 marked Exhibit 9. It is an e-mail from you to</p> <p>2 Mike Namba in 2002 regarding Ron Hartmann's phone</p> <p>3 number.</p> <p>4 For the record, this document was</p> <p>5 produced to us by California, the Bates stamp is</p> <p>6 CAAG/DHS-E0038815.</p> <p>7 Do you recognize this document?</p> <p>8 A. Only that it has my name on it and that</p> <p>9 it was from me. But no.</p> <p>10 Q. Do you know why Mike Namba wanted the</p> <p>11 number of the representative for Geneva?</p> <p>12 A. No.</p> <p>13 Q. Do you know if Mike Namba called Ron</p> <p>14 Hartmann?</p> <p>15 A. No.</p> <p>16 Q. If you look at the date of the e-mail,</p> <p>17 you sent Ron Hartmann's contact information to</p> <p>18 Mike Namba on August 9th of 2002; correct?</p> <p>19 A. Correct.</p> <p>20 Q. Does that refresh your recollection of</p> <p>21 when your conversation with Ron Hartmann took</p> <p>22 place?</p>
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<p>1 whatever reason, made a phone call or answered a</p> <p>2 phone call. I just recall -- the reason it sticks</p> <p>3 out is because I didn't realize that Sandoz had a</p> <p>4 generic arm. But that's the only reason that it</p> <p>5 sticks out in my mind as any memory at all.</p> <p>6 Q. Have you ever heard the name Ron</p> <p>7 Hartmann?</p> <p>8 A. That's the guy. That's the guy.</p> <p>9 Q. Okay.</p> <p>10 A. Now, yeah. If I saw his name, I would</p> <p>11 remember it.</p> <p>12 Q. Now that you remember the name of the</p> <p>13 person you spoke with, do you remember any other</p> <p>14 details of the call or the conversation?</p> <p>15 A. No. No, I don't.</p> <p>16 Q. I'm going to give you a document that</p> <p>17 may refresh your recollection.</p> <p>18 (Exhibit Ahrens 009 marked)</p> <p>19 MS. BERWANGER: Are we on Exhibit 9?</p> <p>20 THE REPORTER: Correct.</p> <p>21 MS. BERWANGER: Q. Okay. The court</p> <p>22 reporter has placed in front of you a document</p>	<p>1 A. No.</p> <p>2 Q. Do you know how you came to have Ron</p> <p>3 Hartmann's contact information in your file?</p> <p>4 A. I don't recall.</p> <p>5 Q. Sitting here today, you don't recall Ron</p> <p>6 Hartmann ever making representation to you about</p> <p>7 pricing that you found to be false or misleading,</p> <p>8 do you?</p> <p>9 MR. GLASER: Object as to form.</p> <p>10 THE WITNESS: Because I don't remember</p> <p>11 the context of the conversation, I can't say that</p> <p>12 -- I mean the way that that question is stated, it</p> <p>13 sort of implies that there would have been a</p> <p>14 conversation around pricing. But because I don't</p> <p>15 remember what the conversation was about, I can't</p> <p>16 say -- I can't answer that question the way it's</p> <p>17 phrased.</p> <p>18 MS. BERWANGER: Q. Well, to your</p> <p>19 recollection today, you can't recall whether Ron</p> <p>20 Hartmann ever discussed pricing with you in a way</p> <p>21 that you found to be false and misleading; is that</p> <p>22 correct?</p>

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<p>1 MR. GLASER: Object as to form.</p> <p>2 THE WITNESS: I can't recall the</p> <p>3 conversation, so I can't recall any aspect of the</p> <p>4 conversation.</p> <p>5 MS. BERWANGER: You can put that exhibit</p> <p>6 aside.</p> <p>7 Q. Are you aware of any supplemental rebate</p> <p>8 agreements that California had with Sandoz?</p> <p>9 And by "Sandoz," for the record, I'm</p> <p>10 referring to the generic manufacturer.</p> <p>11 A. No.</p> <p>12 MS. BERWANGER: Mark this Exhibit 10,</p> <p>13 please.</p> <p>14 (Exhibit Ahrens 010 marked)</p> <p>15 MS. BERWANGER: Q. The court reporter</p> <p>16 has placed in front of you Exhibit 10 to your</p> <p>17 deposition. It is a document that was produced to</p> <p>18 us by the State of California, it bears a Bates</p> <p>19 stamp CAAG/DHS0079918 through 79921.</p> <p>20 Do you recognize this document?</p> <p>21 A. I recognize the format of the document.</p> <p>22 So are you asking me do I specifically</p>	<p>1 Q. If you look on the first page, about a</p> <p>2 third of the way down there's an entry where it</p> <p>3 says "Geneva" under the Labeler Name and</p> <p>4 "Lorazepam" under the Drug Description. Do you</p> <p>5 see that?</p> <p>6 A. Correct, yes.</p> <p>7 Q. Do you recall a supplemental rebate</p> <p>8 program involving generic manufacturers for the</p> <p>9 drug Lorazepam?</p> <p>10 A. When you say "supplemental rebate</p> <p>11 program," the entire program, that's the whole</p> <p>12 program, whether it's generic or single source.</p> <p>13 Q. Do you remember a program -- scratch</p> <p>14 that.</p> <p>15 Do you remember a program for the drug</p> <p>16 Lorazepam in which California tried to enter into</p> <p>17 supplemental rebate contracts with both generic</p> <p>18 and brand-name manufacturers?</p> <p>19 A. The program is still in existence. It's</p> <p>20 a State supplemental rebate program. And I do</p> <p>21 recall an attempt to contract with generic</p> <p>22 manufacturers with Lorazepam being the drug that</p>
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<p>1 remember this particular document?</p> <p>2 Q. We can start there.</p> <p>3 A. I don't remember this particular</p> <p>4 document.</p> <p>5 Q. But you remember documents similar to</p> <p>6 this document?</p> <p>7 A. Correct.</p> <p>8 Q. Could you describe this document?</p> <p>9 A. It's a database of contracts that -- or</p> <p>10 it's like the history of contracts that the</p> <p>11 Department would have had with different</p> <p>12 manufacturers.</p> <p>13 Q. Is it fair to say that this is a</p> <p>14 database of contracts for supplemental rebates</p> <p>15 that the Department would have had with</p> <p>16 manufacturers?</p> <p>17 A. I think that you saw from the earlier</p> <p>18 contract that had no supplemental rebate that</p> <p>19 there were occasions where we would have contracts</p> <p>20 with no supplemental rebate. So this is a</p> <p>21 database of contracts, period, that manufacturers</p> <p>22 had with the Department.</p>	<p>1 we sort of did -- experienced the feasibility or</p> <p>2 the outcomes or the results of contracting with</p> <p>3 generic companies. So...</p> <p>4 Q. Based on this document, does it appear</p> <p>5 to you that Geneva did in fact enter to a</p> <p>6 supplemental rebate agreement with California for</p> <p>7 Lorazepam?</p> <p>8 A. Yes.</p> <p>9 Q. And based on this document, it looks</p> <p>10 like the original expiration date was June 30th,</p> <p>11 2003; correct?</p> <p>12 A. Correct.</p> <p>13 Q. Do you recall the length of the</p> <p>14 supplemental rebate agreement for Lorazepam?</p> <p>15 A. No.</p> <p>16 Q. From this document, can you tell when</p> <p>17 Geneva would have initially entered into the</p> <p>18 supplemental rebate agreement with Lorazepam --</p> <p>19 with California for Lorazepam? Excuse me.</p> <p>20 A. No.</p> <p>21 Q. You can put that away.</p> <p>22 I'll mark this Exhibit 11.</p>

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<p>1 I apologize, I only have one copy of 2 this document. 3 (Exhibit Ahrens 011 marked) 4 MS. BERWANGER: Q. The court reporter 5 has placed in front of you Exhibit 11, which is a 6 document that was produced by my client and is 7 Bates-stamped SANDOZ CALI 3000314 through 3000368. 8 It is a letter dated August 4th, 1992 from Ron 9 Hartmann to Michael Neff with attachments. 10 A. Okay. 11 Q. Have you ever seen this document before? 12 A. No. 13 Q. Have you ever seen any documents like 14 it? 15 A. No. 16 Q. Who is Michael Neff? 17 A. He was -- when I met him, which was 18 after this date, he was the chief of our -- of the 19 Medi-Cal Contracting Section. 20 Q. If you look at the second paragraph to 21 this letter, Ron Hartmann represents that he is 22 including a printout identifying the AMP and</p>	<p>1 A. Correct. 2 Q. And based on Ron Hartmann's letter where 3 he said that he was including a printout 4 identifying AMP, would you agree with me that that 5 column is likely to represent AMP? 6 A. That would be an assumption. 7 Q. I can represent to you that this column 8 is the same as AMP for these products and that 9 that is what my client was transmitting. 10 12. 11 (Exhibit Ahrens 012 marked) 12 MR. GLASER: This is number? 13 MS. BERWANGER: 12. 14 Q. Exhibit 12 is a document Bates-stamped 15 CAAG/DHS-SAN000063 through 000078. 16 A. Okay. 17 Q. Have you ever seen this document before? 18 A. No. 19 Q. If you would turn to the third page of 20 the document, Bates-stamped 000065, there's 21 another cover letter from Ron Hartmann, which 22 again he says he is including a printout</p>
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<p>1 calculated rebate for certain products; correct? 2 A. Correct. 3 Q. Actually, if you look at the last 4 sentence of the first paragraph, the products he's 5 referring to are the drugs reimbursed from January 6 1th, 1992 through March 31st, 1992; correct? 7 A. Correct. 8 Q. And if you turn with me to the page 9 Bates-stamped 3000342. Starting there and 10 continuing on -- actually, I'm sorry, I want you 11 to turn to the next page, page Bates-stamped 12 SANDOZ CALI 300343. 13 There is a chart there for the first 14 quarter of 1992; correct? 15 A. Correct. 16 Q. And to the left of the chart is a column 17 for Item Number and then to the right of that is a 18 column for the product, which appears to list the 19 generic name of the product; is that correct? 20 A. Correct. 21 Q. And then to the right of that there is a 22 column for Average Manufacturing Cost; correct?</p>	<p>1 identifying the AMP and calculated rebate for the 2 period of October 1st, 1994 through December 31st, 3 1994; correct? 4 A. Correct. 5 Q. And if you flip two pages in from that, 6 again there is another schedule which lists the 7 AMPs for several products; correct? 8 MR. GLASER: Object as to form. 9 THE WITNESS: The list is Average 10 Manufacturer Cost, which you have said meant the 11 manufacturer intended to mean AMP. So that's 12 listed there. 13 MS. BERWANGER: You can put that 14 document away. 15 13. 16 (Exhibit Ahrens 013 marked) 17 MS. BERWANGER: Exhibit 13 is a document 18 Bates-stamped CAAG/DHS-SAN000296 through 239, a 19 multiple-page document that begins with what looks 20 to be -- what appears to be a copy of a check from 21 Geneva to the Department of Health Services 22 Accounting Section.</p>

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<p>1 A. Okay.</p> <p>2 Q. Have you ever seen this document before?</p> <p>3 A. No.</p> <p>4 Q. If you turn to the fourth page of the</p> <p>5 document, Bates-stamped 000299, there's another</p> <p>6 letter from Ron Hartmann to the State of</p> <p>7 California in which again he says that he is</p> <p>8 including a printout identifying the AMP and</p> <p>9 calculated rebate for the period October 1st, 1995</p> <p>10 through December 31st, 1995; correct?</p> <p>11 A. Correct.</p> <p>12 Q. And he also notes that there is an</p> <p>13 adjustment for a 10 percent supplemental rebate;</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. And if you turn to page Bates-stamped</p> <p>17 303 you'll see a schedule like the last two that</p> <p>18 we looked at. This one is for the fourth quarter,</p> <p>19 1995 and includes the AMPs for several products;</p> <p>20 correct?</p> <p>21 MR. GLASER: Object as to form.</p> <p>22 THE WITNESS: Again it includes the</p>	<p>1 DataBank; correct?</p> <p>2 A. Could have. But why?</p> <p>3 Q. Do you know whether anyone ever did?</p> <p>4 A. Not that I'm aware of.</p> <p>5 Q. And is it fair to say that if someone</p> <p>6 had compared the AMP to the AWP they would have</p> <p>7 found that the AMPs were lower than the AWP for</p> <p>8 the product?</p> <p>9 A. I don't know.</p> <p>10 Generally speaking, AMP for single</p> <p>11 source and multiple source is generally lower than</p> <p>12 the AWP.</p> <p>13 Q. But generally it's fair -- so it's fair</p> <p>14 to say that generally the AMP would have been</p> <p>15 lower than the AWP for the products?</p> <p>16 A. Generally.</p> <p>17 Q. And when you were speaking with Mr. Cyr</p> <p>18 earlier today, I believe that you said that</p> <p>19 California had access to WAC information.</p> <p>20 A. California. When he says "California,"</p> <p>21 that's the State of California. I mean that</p> <p>22 wasn't quantified as to program. So to the extent</p>
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<p>1 Average Manufacturer Cost.</p> <p>2 MS. BERWANGER: Q. So is it fair to say</p> <p>3 that from 1992 through 1995, based on the</p> <p>4 discussion we just had, that California received</p> <p>5 AMP information from Geneva?</p> <p>6 MR. GLASER: Object as to form.</p> <p>7 THE WITNESS: What we received was</p> <p>8 information that the manufacturer reported to us.</p> <p>9 MS. BERWANGER: Q. And the manufacturer</p> <p>10 told you that that was a printout identifying the</p> <p>11 AMP of the product; correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know what California -- do you</p> <p>14 know what the Department did with AMP information</p> <p>15 that it received from manufacturers in the 1990s?</p> <p>16 A. I would only be guessing. There's a</p> <p>17 different section that handled rebates, the check</p> <p>18 disputes, all of that, so I can't speak to why the</p> <p>19 information would have been generally provided.</p> <p>20 Q. If the Department had AMP information,</p> <p>21 it could have compared that information to the</p> <p>22 AWP for the products that were listed in First</p>	<p>1 that anybody has access to Red Book, anybody can</p> <p>2 look up WAC.</p> <p>3 Q. Could the Department have compared the</p> <p>4 AMPs it received from manufacturers to the WAC for</p> <p>5 the product?</p> <p>6 A. Could have.</p> <p>7 Q. Do you know whether anyone ever did?</p> <p>8 A. No.</p> <p>9 Q. Just for the record, did you mean by</p> <p>10 "no" that to your knowledge no one ever did or</p> <p>11 that you don't know whether anyone ever did?</p> <p>12 A. I don't know whether or not anyone did.</p> <p>13 Q. Is it fair to say that sitting here</p> <p>14 today you can't recall a conversation with anyone</p> <p>15 from Sandoz where that person said something to</p> <p>16 you about pricing that you found to be false and</p> <p>17 misleading?</p> <p>18 MR. GLASER: Object as to form.</p> <p>19 THE WITNESS: If I can't remember the</p> <p>20 conversation, how can I confirm or deny any</p> <p>21 portion of the conversation?</p> <p>22 MS. BERWANGER: Q. Well, you can't</p>

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Ahrens, Katherine

May 20, 2009

Sacramento, CA

<p style="text-align: right;">Page 210</p> <p>1 remember any false statement that anyone from 2 Sandoz ever made? 3 A. How would I know? 4 MR. GLASER: I'm going to caution the 5 witness to let me interject. 6 I would object as to form. 7 THE WITNESS: How would I know? If I 8 don't remember the conversation or any aspect of 9 the conversation, how would I remember if anything 10 was true or false? I remember nothing about the 11 conversation. 12 MS. BERWANGER: Q. And another way of 13 saying that is that you do not remember anything 14 being false? 15 MR. GLASER: Object as to form. 16 MS. BERWANGER: Q. Correct? 17 A. I would not state it as such. 18 I do not remember any portion of the 19 conversation. 20 MS. BERWANGER: I have no further 21 questions. 22 Subject to any further document</p>	<p style="text-align: right;">Page 212</p> <p>1 CERTIFICATE OF REPORTER 2 I, JOHN P. SQUIRES, a Certified Shorthand 3 Reporter, hereby certify that the witness in the 4 foregoing deposition, KATHERINE AHRENS, was duly 5 sworn by me; that the testimony of said witness was 6 taken down in shorthand by me at the time and place 7 herein stated; that the testimony of said witness was 8 thereafter reduced to typewriting, by computer, under 9 my direction and supervision. 10 I further certify that I am not of counsel 11 or attorney for any of the parties to said cause, nor 12 in any way interested in the outcome of this cause 13 and I am not related to any of the parties thereto. 14 I declare under penalty of perjury that the 15 foregoing is true and correct. I have hereunto set 16 my hand on May 28, 2009. 17 18 19 _____ 20 John P. Squires, CSR No. 2001 21 22</p>
<p style="text-align: right;">Page 211</p> <p>1 production by the State of California or any 2 further discovery or questions to the witness, 3 I'll pass the witness. 4 Thank you very much. 5 MR. GLASER: I have no questions. 6 MR. CYR: So I guess we're done for the 7 day. 8 THE VIDEOGRAPHER: This concludes 9 today's deposition of Katherine Ahrens. We're now 10 off the video record at approximately 4:41. 11 12 13 14 15 _____ 16 KATHERINE AHRENS 17 Subscribed and sworn to and before me 18 this _____ day of _____, 20____. 19 20 21 _____ 22 Notary Public</p>	

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